



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2012

Ms. Patricia Fleming
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2012-18648

Dear Ms. Fleming:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 471535.

The Texas Department of Criminal Justice (the "department") received a request for: (1) information pertaining to an incident on August 21, 2012; (2) information pertaining to legal research and other possessions of a named inmate; (3) information pertaining to inmates in Administrative Segregation at a specified facility on August 21, 2012; (4) information pertaining to an employee and a named inmate on August 21, 2012; and (5) any and all records relating to incidents, complaints, grievances from department inmates, disciplinary actions taken, charges filed, and civil or criminal lawsuits filed as a result of the conduct of five specified employees. You state the department has or will release some information responsive to item five of the request. You assert the department is not required to comply with items one through four of this request pursuant to section 552.028 of the Government Code. You claim the submitted information is excepted from disclosure under section 552.134 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.028 of the Government Code provides, in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). You state items one through four of the request are subject to section 552.028. You explain the requestor, in this instance, is the wife of the inmate in question. You argue the requestor is acting as the agent of the inmate. However, the fact that the requestor is the inmate's spouse does not in itself establish she submitted the request as an agent of the inmate. As you have not provided any additional information establishing the requestor is in fact acting as an agent of an inmate, we cannot conclude section 552.028 is applicable in this instance. Accordingly, we will address your argument against disclosure under the Act.

We note you have not submitted information responsive to categories one through four of the request for information, for which you assert section 552.028 is applicable. To the extent any information responsive to these portions of the request existed and was maintained by the department on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.134 of the Government Code relates to inmates of the department and provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part:

[n]otwithstanding [s]ection . . . 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the [department] is subject to required disclosure under Section 552.021:

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Id. § 552.029(8). In this instance, some of the submitted information pertains to the conduct of department employees. As such, this information is not “about an inmate” for purposes of section 552.134 and may not be withheld on that basis. However, upon review, we find the information we have marked pertains to individuals confined as inmates in a facility operated by the department; therefore, we conclude section 552.134(a) is generally applicable to this information. We note, however, some of this information pertains to incidents involving the use of force. Therefore, the department must release basic information about these incidents pursuant to section 552.029(8). Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Therefore, with the exception of basic information, the department must withhold the information we have marked pursuant to section 552.134(a) of the Government Code.

We note portions of the remaining information are subject to section 552.117 of the Government Code.² Section 552.117(a)(3) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a current or former employee of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. *Id.* § 552.117(a)(3). Thus, the department must withhold the information we have marked under section 552.117(a)(3) of the Government Code.

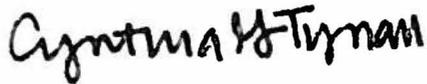
In summary, with the exception of basic information, the department must withhold the information we have marked under section 552.134 of the Government Code. The department must withhold the information we have marked under section 552.117(a)(3) of the Government Code. The department must release the remaining information.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 471535

Enc. Submitted documents

c: Requestor
(w/o enclosures)