



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2013

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

OR2013-14657

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# 497497.

The Texas Department of Criminal Justice (the "department") received a request for the following categories of information: (1) a specified "IOC/Memo[andum]," the name, rank, title, business e-mail, business telephone number, and address of a specified department employee, and all results and reports for a specified examination; (2) information pertaining to job assignments for thirteen named inmates during a specified time period; (3) a specified policy or memorandum; and (4) information pertaining to the specified policy or memorandum, including whether it is still in effect or when it was cancelled. You claim the submitted information is excepted from disclosure under section 552.134 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note you have not submitted any information responsive to the first, third, or fourth categories of the request for information or information pertaining to one of the named inmates in the second category of the request. Thus, to the extent such information existed and was maintained by the department on the date the department received the request for

information, we presume the department has released it. If not, the department must do so at this time. *See id.* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Next, we note some of the information you have submitted pertaining to job assignments for the named inmates is outside the time period specified in the request. Accordingly, this information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release such information in response to this request.

We must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1). You state the department received the present request for information on May 21, 2013. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Because May 27, 2013 was a holiday, we find the department's ten-and fifteen-business-day deadlines were June 5, 2013, and June 12, 2013, respectively. You provide representations the department placed the information required by sections 552.301(b) and (e) in the mail on June 20, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the department failed to comply with the requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by

law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because section 552.134 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this exception to the responsive information.

Section 552.134 of the Government Code is applicable to information relating to inmates and former inmates of the department and provides the following, in pertinent part:

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). You state the submitted inmate job assignment history information is information about inmates confined in a facility operated by the department for the purposes of section 552.134. You assert, and we agree, the exceptions in section 552.029 are not applicable in this instance. Accordingly, we conclude the department must withhold the responsive information pursuant to section 552.134 of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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Ref: ID# 497497

Enc. Submitted documents

c: Requestor
(w/o enclosures)