



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2013

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

OR2013-16286

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# 500001.

The Texas Department of Criminal Justice (the "department") received a request for specified visitor information pertaining to a named inmate. You claim the requested information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it does not consist of the specified visitor information. This ruling does not address the public availability of information that is not responsive to the request, and the department is not required to release non-responsive information.

Next, we address the requestor's assertion the department failed to comply with the procedural requirements of subsections 552.301(b) and 552.301(d) of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to state the exceptions that apply not later than the tenth business day

after the date of receiving the written request. *Id.* § 552.301(b). Pursuant to section 552.301(d), the governmental body must provide the requestor, within ten business days after the date of its receipt of the request for information, a statement the governmental body has asked for a decision from the attorney general and a copy of the governmental body's written communication to the attorney general asking for a decision. *See id.* § 552.301(d). You state, and provide documentation showing, the department received the request for information on July 3, 2013. You inform us July 4, 2013, was a holiday for the department. 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. Thus, the department's ten-business-day deadline pursuant to subsections 552.301(b) and 552.301(d) was July 18, 2013. The department's request for a decision was hand delivered to this office on July 18, 2013. However, the requestor has submitted to our office a copy of the envelope in which the department's written comments were provided to him, which is post-meter marked July 19, 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). As such, we find the department has failed to comply with the requirements mandated by subsection 552.301(d).

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because sections 552.101 and 552.134 of the Government Code can provide compelling reasons for non-disclosure, we will consider the applicability of these sections to the responsive information.

Section 552.134 of the Government Code relates to information about inmates of the department. This exception provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice 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 assert the responsive information consists of a record pertaining to an inmate confined in a facility operated by the department. Upon review, we agree that the information is subject to section 552.134. We find that the exceptions in

section 552.029 are not applicable in this instance. Therefore, the department must withhold the responsive information under section 552.134 of the Government Code.¹

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 500001

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.