



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 28, 2014

Ms. Robin L. Whitney  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
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Huntsville, Texas 77342-4004

Mr. John C. West  
General Counsel  
Texas Department of Criminal Justice  
Office of the Inspector General  
4616 Howard Lane, Suite 250  
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OR2014-13029

Dear Ms. Whitney and Mr. West:

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# 533105.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified incident. The department's Office of the General Counsel (the "OGC") and Office of the Inspector General (the "OIG") have submitted separate requests for a decision from this office. The OGC claims the information it submitted is excepted from disclosure under section 552.134 of the Government Code, while the OIG claims the information it submitted is excepted from disclosure under sections 552.103 and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information consists of completed investigations that are subject to section 552.022(a)(1) of the Government Code, which reads as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Although the OIG asserts the information it submitted is excepted from release under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold this information under section 552.103. However, section 552.134 of the Government Code makes information confidential under the Act. Accordingly, we will consider the applicability of this section to the submitted information.

Section 552.134(a) relates to inmates of the department and provides the following:

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 the following:

Notwithstanding Section . . . 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:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

. . .

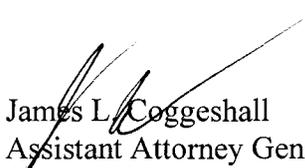
- (8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

*Id.* § 552.029(1), (8). On review, we agree the submitted records constitute information about an inmate for purposes of section 552.134. However, the records contain information that concerns injuries to, the use of force against, and alleged crimes involving the inmate. Thus, the department must release information about the nature of the inmate's injuries and basic information concerning the use of force and crimes.<sup>1</sup> 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. The department must withhold the remaining 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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 533105

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the requestor, who represents the inmate at issue, has a right of access to some of the information being released.