



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 24, 2019

Mr. Nicholas Morrell
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2019-30157

Dear Mr. Morrell:

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# 793139 (OGC# PP0154).

The Texas Department of Criminal Justice (the "department") received a request for twelve categories of information pertaining to a named inmate, including information pertaining to the inmate's possible release and parole dates. You state the department does not have information responsive to portions of the request.¹ You claim the department need not comply with the request for information pursuant to section 552.028 of the Government Code. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered your arguments and reviewed the submitted information.

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

¹ The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(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). As noted above, the individual named in the request is an inmate in a correctional facility. *See id.* § 552.028(c) ("correctional facility" is a place for the confinement of a person arrested for, charged with, or convicted of a criminal offense). You inform us the requestor is the sister and legal guardian of the named inmate. Although you assert the requestor is acting on behalf of the named inmate, upon review, we find you have failed to demonstrate the request for information was submitted by an agent of an individual who is imprisoned or confined in a correctional facility. Thus, section 552.028 of the Government Code is not applicable in this instance, and we will address your remaining arguments against disclosure of the submitted 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, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Id. § 552.134(a). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part:

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:

...

(5) the inmate's earliest or latest possible release dates;

(6) the inmate's parole date or earliest possible parole date[.]

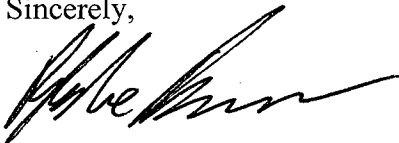
Id. § 552.029(5)-(6). Thus, the legislature explicitly made section 552.134 subject to section 552.029. You contend the submitted information falls within the scope of section 552.134 of the Government Code. You state, and we agree, the submitted information concerns an inmate confined in a facility operated by the department. However, we note some of the submitted information consists of the inmate's earliest or latest possible release dates subject to section 552.029(5) and the inmate's parole date information subject to section 552.029(6). The department may not withhold such information under section

552.134 of the Government Code. Upon review, however, we agree the remaining information is subject to section 552.134 of the Government Code. Accordingly, with the exception of the information subject to 552.029 of the Government Code, which must be released, the department must withhold the submitted information under section 552.134 of the Government Code.²

You also ask this office to issue a previous determination that would authorize the department to withhold information related to non-death-row offenders under section 552.134 of the Government Code without seeking a ruling from this office. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/gw

Ref: ID# 793139

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining arguments against disclosure, except to note the information being released pursuant to section 552.029 of the Government Code may not be withheld under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. *See Gov't Code* § 508.313(f).