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ATTORNEY GENERAL OF TEXAS

February 18, 2020

Ms. Katherine Tanner
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2020-05086

Dear Ms. Tanner:

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# 818981 (OGC# JN0027).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to specified incidents involving a named inmate occurring on specified dates. You argue, pursuant to section 552.028 of the Government Code, the department need not comply with the request for information. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.108 and 552.134 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

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 We assume that 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 that those records contain substantially different types of information than that submitted to this office.

(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 argue the request relates to information requested by an individual who is imprisoned or confined in a correctional facility, or an agent of that individual. The requestor, in this instance, is the wife 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, the submitted information must be released unless it is excepted under the Act.

Section 552.134(a) relates to an inmate 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.

Id. § 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:

...

(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). 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 an alleged crime involving an inmate and an incident involving the use of force. Thus, the department must release basic information concerning these incidents. 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.²

The department also asks this office to issue a previous determination that would authorize it to withhold certain information related to non-death-row offenders under section 552.134 of the Government Code. *See* 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,



Meagan Hunter
Assistant Attorney General
Open Records Division

MH/gw

Ref: ID# 818981

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we do not address the remaining argument of the department to withhold this information.