Office of the Attorney General · State of Texas
John Cornyn

May 18, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-2064

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147402.

The Texas Department of Criminal Justice (the "department") received a request for a complete copy of all reports, witness statements, investigative materials, files and/or documents or evidence gathered or accumulated in connection with internal affairs investigation number 99-0622. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101, 552.107, 552.108, and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note at the outset that some of the records are subject to section 552.022(a)(3) of the Government Code. Under section 552.022(a)(3), information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body is expressly public unless it is confidential under other law. We note that the submitted information contains a copy of a contract between the department and a half-way house. A copy of the half-way house's policy and procedures manual is attached to the contract. You argue that these records are excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception under the Public Information Act and is not "other law" for purposes of section 552.022 of the Government

Code.[1] *See* Open Records Decision No. 586 (1991). Therefore, we will not address your section 552.108 arguments for these documents.

You also argue that the contract and attached policy manual are excepted from disclosure under section 552.101 of the Government Code in conjunction with article 39.14 of the Code of Criminal Procedure.[2] Article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. However, article 39.14 does not expressly make information confidential. Therefore, we do not agree that article 39.14 of the Code of Criminal Procedure constitutes "other law" for purposes of section 552.022 of the Government Code. *See In Re City of Georgetown*, No. 00-0453, 2001 WL 123933, *14 (Tex. Feb. 15, 2001) (finding that Texas Rules of Civil Procedure and Texas Rules of Evidence that expressly make information confidential are 'other law' within the meaning of section 552.022). Consequently, you may not withhold the copy of the contract and attached policy manual pursuant to section 552.101 of the Government Code in conjunction with article 39.14 of the Code of Criminal Procedure. The contract and attached policy manual must, therefore, be released.

You claim that the remaining submitted information is excepted from disclosure under section 552.131 of the Government Code. Section 552.131(a) states in pertinent part:

> (a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice 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.

Gov't Code, § 552.131(a). We agree that most of the information you seek to withhold under section 552.131 concerns inmates who are confined in a facility operated by or under a contract with the department. Therefore, we conclude that the department must withhold this information under section 552.131 of the Government Code. However, section 552.131(a) is explicitly made subject to section 552.029 of the Government Code. Basic information

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[1] Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 665 at 2 n.5 (2000) (governmental body may waive litigation exception, section 552.103), 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

[2] Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes.

regarding an alleged crime involving an inmate must be released in accordance with section 552.029(a)(8) of the Government Code. *See* Gov't Code, §§ 552.131(a), 552.029(a)(8). This office has determined that basic information under section 552.029(a)(8) includes the time and place of the incident, names of inmates and department officials directly involved in the incident, 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 is generally required to release all basic information relating to the incident. However, in this instance, we conclude that you must withhold the inmates' identities from disclosure under the common law right to privacy. *See* Open Records Decision Nos. 393 at 2 (1983) (finding that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy), 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*)(concluding that identities of victims and witnesses to sexual harassment must be withheld under common law privacy). The remaining basic information must, however, be released.

We note that some of the submitted documents consist of criminal history record information that is protected from disclosure under section 552.101 of the Government Code in conjunction with the common law right to privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). You state, and we agree, that items 42 and 43 of the submitted information consist of a compilation of a particular individual's criminal history record information. Therefore, we conclude that the department must withhold this information from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common law right to privacy. *See id.*; *see also* Gov't Code § 411.106(b).

We also note that one of the submitted documents is protected from disclosure under section 552.130. Section 552.130 of the Government Code excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. The department must withhold the submitted Texas driver's license under section 552.130.

In summary, you must release the copy of the contract and the attached policy manual. You must withhold from disclosure the documents we have marked under section 552.131 of the Government Code. However, except for information relating to the identities of the inmates which is protected under the common law right to privacy, the department must release basic information under section 552.029(a)(8) of the Government Code. You must withhold the criminal history record information in items 42 and 43 of the submitted information pursuant to section 552.101 of the Government Code. Finally, you must withhold the Texas driver's

license under section 552.130 of the Government Code. We have marked the documents accordingly.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

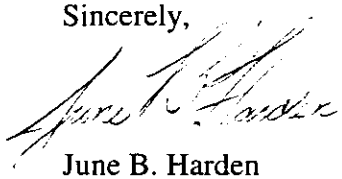
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RJB/seg

Ref: ID# 147402

Encl. Marked documents

cc: Ms. Charlotte Bingham
Crenshaw, DuPree & Milam
1500 Broadway, 10th Floor
Lubbock, Texas 79401
(w/o enclosures)