



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 30, 2003

Mr. James M. Frazier, III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2003-4448

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183466.

The Texas Department of Criminal Justice (the "TDCJ") received several requests for copies of information concerning the following categories: disciplinary actions pertaining to certain named individuals, all documentation relating to the requestor, all of the requestor's audits from the Access to Courts, a form contained in a "CO" packet, certain training by a named individual, and all information relating to a specified incident involving a named individual. You assert the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.117, and 552.134 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

Initially, we note that the request encompasses more information than the TDCJ submitted to this office for review. Therefore, if the TDCJ has not released the remaining responsive information to the requestor, it must do so at this time. *See* Gov't Code §§ 552.301, .302.

Next, we address your concern that investigation # MA-03125-06-2000 and the associated videotape may not be responsive to the request. Upon review, we find this information is responsive to the request because it pertains to disciplinary action involving one of the individuals named by the requestor. Therefore, we address your claimed exceptions with respect to this information.

Also, we note section 552.022 of the Government Code makes some of the submitted information expressly public. Section 552.022 provides, in relevant part:

- (a) 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 under this chapter unless they are expressly confidential under 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[.]

After reviewing the submitted documents, we find report # MA-03125-06-2000 and the associated videotape concern a completed investigation conducted by the Office of the Inspector General. Further, we find other documents pertaining to certain disciplinary actions consist of completed investigations. Thus, as section 552.022 makes this information expressly public, the TDCJ may withhold the completed investigation information only to the extent other law makes the information confidential or the information is protected by section 552.108 of the Government Code. Section 552.134 of the Government Code qualifies as "other law" to make information confidential; therefore, we will consider your assertion of this exception as it applies to the information subject to section 552.022 and the remaining submitted information.

Section 552.134(a) of the Government Code provides the following:

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.

Section 552.029 of the Government Code provides:

Notwithstanding Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice 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.

Section 552.134 is explicitly made subject to section 552.029. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure.

You inform us, and our review confirms, that the information you have marked as "§ 552.134" concerns inmates confined in a TDCJ facility. Further, we note that some of these documents contain information regarding use of force incidents. Accordingly, while the TDCJ generally must withhold most of the submitted information, including the videotape and the completed investigations, under section 552.134, the TDCJ must release certain basic information regarding the incidents involving use of force pursuant to section 552.029(8). Basic information includes the time and place of the incident, names of inmates and TDCJ 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 incidents.

In addition, we note federal regulations prohibit the release of criminal history report information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, we agree the TDCJ must withhold the CHRI you have marked from the requestor.

Last, you assert section 552.108 of the Government Code excepts the submitted key log information from disclosure. This provision provides, in pertinent part, as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). This office has stated a governmental body may withhold certain procedural information under section 552.108 of the Government Code, or its statutory predecessors. *See, e.g.,* Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). However, to claim protection under this aspect of section 552.108, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, a governmental body may not withhold commonly known policies and techniques

under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet its burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). Also, this office has concluded that section 552.108 excepts from public disclosure information that relates to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that section 552.108 excepts sketch showing security measures for execution).

In this instance, you contend the submitted key logs function as a monitoring device and reveal "critically important information about the locks within the prison and the keys that fit them[.]" You explain that public release of the key log information could provide valuable information regarding security which ultimately could promote violent conduct and escape opportunities within the prison. Moreover, you advise us that release of this information will "empower inmates . . . to detect and exploit maliciously any mistakes and weakness in our system." Based on your representations, we agree that release of the key log information would interfere with law enforcement. *See* Gov't Code § 552.108(b)(1). Therefore, we conclude the TDCJ may withhold the key log information from the requestor under section 552.108 of the Government Code.

In summary, the TDCJ must withhold most of the submitted information under section 552.134 of the Government Code. However, the TDCJ must release basic information pertaining to the use of force incidents under section 552.029(8) of the Government Code. The TDCJ must withhold CHRI under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The TDCJ may withhold the key log information under section 552.108 of the Government Code. Because sections 552.101, 552.108, and 552.134 are dispositive, we do not address your remaining arguments.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 177688

Enc: Submitted documents

c: Ms. Linda Reaves  
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(w/o enclosures)