



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 15, 2003

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

OR2003-7344

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# 189360.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to "EEO #02003788." You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.108(b)(1) of the Government Code excepts from disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108(b)(1). Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

This office has on numerous occasions concluded that section 552.108 excepts from disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.,* Open Records Decision Nos. 531 (1989) (holding that predecessor to section 552.108 excepts detailed guidelines regarding police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding

that predecessor to section 552.108 excepts sketch showing security measures for execution). You indicate that the submitted shift rosters reveal the name and placement of certain officers within the prison unit or whether a particular post was manned on certain days. You contend that this information, if released, could “help inmates in their future attempts to circumvent the security of the prison unit,” and “could compromise the safety of a prison.” Based on your arguments and our review of the rosters, we agree that the release of the shift rosters would interfere with law enforcement or crime prevention. Accordingly, we conclude that the department may withhold the submitted shift rosters pursuant to section 552.108(b)(1) of the Government Code.

You claim that the remaining submitted information is excepted from disclosure pursuant to section 552.134 of the Government Code. Section 552.134(a) provides:

(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 § 552.134(a). Based on your arguments and our review of the remaining submitted information, we agree that this information concerns inmates who are confined in a facility operated by the department. Section 552.029 of the Government Code does not apply to this information. Accordingly, we conclude that the department must withhold the remaining submitted information pursuant to section 552.134 of the Government Code.¹

In summary, the department may withhold the submitted shift rosters pursuant to section 552.108(b)(1) of the Government Code. The department must withhold the remaining submitted information pursuant to section 552.134 of the Government Code.

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.

¹ Because we base our ruling on sections 552.108 and 552.134 of the Government Code, we need not address your remaining claimed exception to disclosure.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 189360

Enc. Submitted documents

c: Mr. Mark Betts
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(w/o enclosures)