



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2004

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

OR2004-3522

Dear Mr. Frazier:

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# 200474.

The Texas Department of Criminal Justice ("TDCJ") received a request for information relating to a specified Office of Inspector General investigation. You claim that the requested information is excepted from disclosure under sections 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.134 of the Government Code relates to inmates of TDCJ and provides in relevant part:

- (a) 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.

Gov't Code § 552.134(a). Section 552.029 of the Government Code provides that, "[n]otwithstanding . . . Section 552.134," eight specified categories of "information about an inmate who is confined in a facility operated by or under a contract with [the department

are] subject to required disclosure.” Thus, the legislature explicitly made section 552.134 subject to section 552.029.

We agree that section 552.134(a) is applicable to most of the submitted information and find that none of this information is subject to disclosure under section 552.029. This information, which we have marked, is excepted from required public disclosure under section 552.134. However, we note that the remaining documents do not, on their face, reveal any information relating to a TDCJ inmate. Therefore, they may not be withheld under section 552.134.

We note, however, that you claim that the submitted shift roster is excepted by section 552.108 of the Government Code. Section 552.108(b)(1) excepts from public 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.” Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain 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 public disclosure information relating 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). You state that the submitted shift roster indicates the name and placement of certain officers within the prison unit or whether a particular post was manned on certain days. You also contend that this information, if released, could compromise the safety of the prison. Having reviewed your arguments and the information at issue, we agree that the release of the shift roster would interfere with law enforcement or crime prevention. Accordingly, TDCJ may withhold the shift roster from disclosure under section 552.108(b)(1) of the Government Code.

We further note that the remaining information contains information that is confidential under section 552.117 of the Government Code. Section 552.117(a)(3) excepts the home address and telephone number, social security number, and family member information of current or former employees of TDCJ. Thus, you must withhold the information we have marked under section 552.117(a)(3).

In summary, you must withhold the information we have marked under section 552.134 of the Government Code. You may withhold the submitted shift roster under section 552.108 of the Government Code. You must withhold the information we have marked under section 552.117 of the Government Code. All remaining information must be released to the requestor.

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,

A handwritten signature in cursive script that reads "Jennifer E. Berry".

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 200474

Enc: Submitted documents

c: Mr. John Gonzales
1903 South Tyler
Beeville, Texas 78102
(w/o enclosures)