



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2005

Mr. Michael P. Mondville
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2005-07668

Dear Mr. Mondville:

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# 230770.

The Texas Department of Criminal Justice (the "department") received a request for the following information:

- 1) "Monthly Activity Reports produced by the Classification and Records department in 2005[.]"
- 2) "Classification Plan setting forth the characteristics and boundaries of Protective Custody and Safekeeping."
- 3) "[A]ny database maintained by the Emergency Action Center (EAC) covering any alleged sexual assaults in Texas prisons."

You state that the information responsive to parts 1 and 2 of the current request will be provided to the requestor. You claim that the information responsive to part 3 of the current request is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the

Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

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

(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:

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 [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.

Gov't Code § 552.029(8). We note that section 552.134 is explicitly made subject to section 552.029. Pursuant to section 552.029(8), 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 state that the submitted information concerns inmates confined in a facility operated by the department. Thus, we agree that section 552.134 is applicable to the submitted information. However, most of the submitted documents relate to crimes involving inmates. Thus, while the department must generally withhold the submitted information under section 552.134, the department must release basic information regarding crimes involving an inmate pursuant to section 552.029(8) unless this basic information is otherwise excepted from

¹We 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.

disclosure under the Act.² Because you also raise sections 552.101 and 552.108 of the Government Code as exceptions against disclosure, we will address your claims under these sections for the basic information not excepted under section 552.134.

The submitted records relate to cases involving alleged sexual assaults. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information that either identifies or tends to identify a victim of sexual assault or other sex-related offenses may be withheld under common law privacy. The submitted information pertain to allegations of sexual assault. Therefore, information that would identify or tend to identify the victim of a sexual assault may not be released as basic information under section 552.029 of the Government Code. We have marked the identifying information, which includes the victims’ names and TDCJ numbers, that must be withheld pursuant to section 552.101 in conjunction with common law privacy.

Next, we address your arguments for withholding the remaining basic information under section 552.108(a)(1) of the Government Code. This section excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime.” A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Although you generally assert section 552.108, you do not explain how the release of the remaining basic information would interfere with the detection, investigation, or prosecution of crime. *See also* Gov’t Code § 552.108(c)(stating that basic information about arrested person, arrest, or crime may not be withheld under Gov’t Code § 552.108). We thus conclude you have not met your burden under section 552.108(a)(1), and the department may not withhold any of the remaining basic information on that ground.

² 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.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code. With the exception of the remaining basic information regarding an alleged crime involving an inmate, the department must withhold the remaining information under 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. *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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

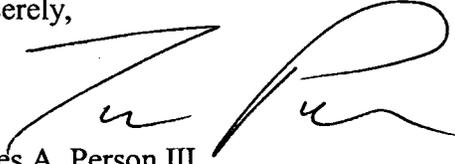
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 black ink, appearing to read 'JAP', written in a cursive style.

James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 230770

Enc. Submitted documents

c: Mr. Bill Medaille
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(w/o enclosures)