



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 22, 2005

Mr. John C. West
Office of the Inspector General
Texas Department of Criminal Justice
P. O. Box 13084
Austin, Texas 78711

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

OR2005-10559

Dear Mr. West and 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# 236606.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a named individual and her visits with specified inmates. The department and the Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate documents that each seeks to withhold from disclosure. The OIG has released basic information to the requestor with redactions pursuant to the previous determination issued by this office in Open Records No. 2005-01067 (2005).¹ The OIG claims that the information submitted by the OIG is excepted from disclosure under

¹Open Records Letter No. 2005-01067 (2005) serves as a previous determination for the department that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

sections 552.101, 552.108, and 552.134 of the Government Code. The department claims that the information it submitted is excepted from disclosure under sections 552.101 and 552.134. We have considered the submitted arguments and reviewed the submitted information.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The OIG explains that its submitted information relates to an open and ongoing criminal investigation and that release of this information will compromise the investigation and institutional security. Based upon this representation, we conclude that the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. *See* 531 S.W.2d at 185; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of the basic front page offense information, which you state has been released, the OIG may withhold the remaining submitted information under section 552.108(a)(1). We note that the OIG has the discretion to release all or part of its remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

The department raises section 552.134 of the Government Code with respect to the information it submitted. Section 552.134 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.

(b) Subsection (a) does not apply to:

...

(2) information about an inmate sentenced to death.

Gov't Code § 552.134(a),(b)(2). The information submitted by the department concerns inmates in a facility operated by or under contract with the department. Thus, section 552.134 is applicable to most of the submitted information, and it must generally be withheld on that basis. We note, however, that a portion of information at issue pertains to an inmate who is on death row and thus is "information about an inmate sentenced to death." *Id.* § 552.134(b)(2). Section 552.134(a) is not applicable to such information. Thus, the department may not withhold the document pertaining to the death row inmate under section 552.134.

However, the department claims that section 552.101 of the Government Code is applicable to the document related to the death row inmate, dated August 18, 2005. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of constitutional privacy. The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. *Id.* The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common-law right to privacy; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d at 492).

In Open Records Decision No. 430 (1985), our office determined that the list of inmate visitors is protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. Further, we recognized that inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. *See also* Open Records Decision No. 185 (1978). We find that the document dated August 18, 2005 pertains to the visitor of an inmate. Therefore, this information is confidential under section 552.101 in conjunction with constitutional privacy and must be withheld.

In summary, the OIG may withhold the information it submitted to this office in its entirety pursuant to section 552.108. The department must withhold the document related to the death row inmate dated August 18, 2005 under section 552.101 in conjunction with constitutional privacy. The department must withhold the remaining information it submitted under section 552.134.

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 Office of the Attorney General 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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 236606

Enc. Submitted documents

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