



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2006

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

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

OR2006-02434

Dear Mr. West and 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# 243822.

The Texas Department of Criminal Justice (the "department") received a request for: 1) "the number of deaths and causes for the Estelle Unit during the months of November and December 2005" including the coroner and autopsy reports, 2) copies of disciplinary reports pertaining to a named department employee, and 3) the "[n]umber of Major Disciplinary Report(s) reduced from a Major to a Minor in the months of November and December 2005 for the Estelle Unit." The department's Office of the General Counsel (the "OGC") and its Office of the Inspector General (the "OIG") submitted separate requests for a decision from this office. The OGC, by letter dated February 15, 2005, has withdrawn its request for a decision because it has released information responsive to the second and third portions of the request to the requestor. The OGC notes that it referred the first portion of the request to the OIG. Thus, we understand that the OGC does not have any information responsive to the first portion of the request, while the OIG states that the OIG does not have the

requested coroner's or autopsy reports.¹ To the extent any other subdivision of the department maintains information responsive to the request for coroner's or autopsy reports, we assume the department has released such information to the requestor. If it has not, the department must do so at this time to the extent that such information existed on the date the department received the request for information. *See* Gov't Code §§ 552.301(a), .302. The OIG states that it is releasing "basic information about the responsive case files and a copy of each Custodial Death Report" with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).² *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). The OIG also states that it is withholding social security numbers pursuant to section 552.147 of the Government Code.³ The OIG claims that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note that the submitted information includes documents that have been filed with a court. Pursuant to section 552.022(a)(17), documents filed with a court must be released, except to the extent that they are confidential under other law. You claim that these documents are excepted from disclosure under section 552.108. However, section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. As such, this section is not other law that makes information confidential for the purposes of section 552.022(a)(17). *See* Open Records Decision No. 586 (1991) (section 552.108 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). However, section 552.134 of the Government Code qualifies as "other law" that makes information confidential; therefore, we will consider your argument under this exception for the information subject to section 552.022.

However, we will first address the OIG's claim under section 552.108 of the Government Code for the portions of the submitted information not subject to section 552.022. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement

¹We note that Act does not require the department to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²Open 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.

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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). A governmental body claiming section 552.108(a)(1) 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The OIG states that “these are open investigations of deaths in custody pending investigation completion, receipt of the Final Autopsy Reports, and case review and approval by OIG and [department] senior management.” Based on this representation and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to this information. *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 submitted information that is not subject to section 552.022 under section 552.108(a)(1). We note that the OIG has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007. As we base our conclusions on section 552.108 with regard to the information that is not subject to section 552.022, we need not address your arguments under section 552.134 with regard to this information other than to note that the basic information at issue is not excepted from disclosure under section 552.134. *See* Gov’t Code § 552.029(8) (basic information about the death of an inmate in custody is not excepted under section 552.134).

We turn next to the submitted documents that are subject to section 552.022. Section 552.134(a) 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). On review, we agree that the documents at issue constitute information about inmates for purposes of section 552.134. Furthermore, we find that these

documents are not subject to section 552.029. Therefore, the OIG must withhold the court-filed documents at issue pursuant to section 552.134.

In summary, other than basic information, which you state has been released, and documents that have been filed with a court, the submitted information may be withheld under section 552.108(a)(1) of the Government Code. The documents that have been filed with a court must be withheld under section 552.134 of the Government Code. As our ruling is dispositive, we need not reach 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, 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 243822

Enc. Submitted documents

c: Mr. David P. O'Neil
Habern, O'Neil, Buckley & Lang, L.L.P.
P.O. Box 8930
Huntsville, Texas 77340
(w/o enclosures)