



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2006

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

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711-2548

OR2006-03389

Dear Mr. Mondville and Mr. West:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 245545.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified internal affairs investigation and grievance. The department's Office of the General Counsel ("OGC") and its Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate documents that each seeks to withhold from disclosure. The OGC states that it will release some responsive information. The OGC claims that the information it has submitted is excepted from disclosure under section 552.134 of the Government Code. The OIG states that it will release basic information held by that office. The OIG also states that it is withholding social

security numbers under section 552.147 of the Government Code.¹ The OIG claims that the information it has submitted is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the submitted arguments and have reviewed the submitted information.

Section 552.134 of the Government Code relates to inmates of the department. This exception states that

[e]xcept 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, 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.

Id. § 552.029(1), (8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

On review, we find that the information submitted by the OGC and most of the information submitted by the OIG constitutes information relating to inmates for purposes of section 552.134. We also find that the exceptions in section 552.029 are not applicable to the information submitted by the OGC. Accordingly, the OGC must withhold this information under section 552.134. However, because some of the information submitted by the OIG relates to an incident that involved a use of force, the OIG must release basic information about that incident under section 552.029(8). The basic information that must be released includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. With the exception of the

¹Section 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.

information that must be released under section 552.029 of the Government Code, the OIG must withhold the information we have marked pursuant to section 552.134.

The OIG claims that the remaining information it submitted is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) 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.” 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 id.* §§ 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 it is conducting a criminal investigation into an alleged grievance. The OIG states that its investigation is ongoing and that the release of its information will interfere with the investigation. Based on these representations and our review, we find that the release of the remainder of the OIG’s information 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). Therefore, with the exception of basic information, which the OIG states it will release, you may withhold the remaining OIG information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov’t Code § 552.007. As our ruling on this issue is dispositive, we need not address the OIG’s remaining argument.

In summary, the OGC must withhold the information it submitted under section 552.134 of the Government Code. With the exception of the information that must be released under section 552.029 of the Government Code, the OIG must withhold the information we have marked pursuant to section 552.134. Since the OIG has released basic information, we conclude that you may withhold the remaining OIG information from disclosure based on section 552.108(a)(1) 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).

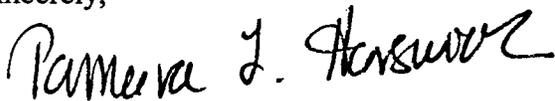
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 245545

Enc. Submitted documents

c: Mr. Rickey G. Bunch
Law Office of Rickey G. Bunch
2110 Hiawatha Boulevard
Wichita Falls, Texas 76301-0421
(w/o enclosures)