



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2007

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

OR2007-02470

Dear Mr. West:

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# 272592.

The Texas Department of Criminal Justice (the "department") received a request for all information regarding a specific internal affairs investigation. The department's Office of the Inspector General (the "OIG") has submitted a brief and documents that it seeks to withhold from disclosure. The OIG states that it does not have some of the requested information.¹ The OIG indicates that it is releasing some of the requested information to the requestor, with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).² The OIG also states that it is withholding social security numbers under section 552.147 of the Government Code.³ The OIG claims, however, that the submitted information is excepted from disclosure under

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the OIG. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (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 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 are excepted from disclosure under section 552.117(a)(3) of the Government Code, regardless of whether the current or former employee complies with section 552.1175 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. Gov't Code § 552.147(b).

sections 552.101, 552.103, 552.108, and 552.134 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

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 552.134 is explicitly made subject to section 552.029, which provides in relevant part the following:

Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice 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(8). The submitted information concerns inmates confined in a facility operated by or under contract with the department. Thus, section 552.134 is applicable to the submitted information, and it must generally be withheld on that basis. However, the submitted documents contain information regarding incidents involving alleged criminal conduct involving inmates. Under section 552.029(8), basic information regarding these incidents is subject to required disclosure.⁴ *Id.*

Although not excepted from disclosure under section 552.134, some of the basic information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.⁵ The doctrine of common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the

⁴Basic 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.

⁵Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the common law right of privacy. Gov't Code § 552.101.

publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information that tends to identify a victim of sexual assault is protected under common law privacy. *See* Open Records Decision No. 339 (1982); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Here, the OIG informs us that the two submitted files, case #06-1754 and case #06-1755, relate to investigations of sexual assault. Further, we note that the requestor is the attorney for the inmate who is an alleged victim in case #06-1754. Section 552.023 of the Government Code gives a person or the person's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of the information. *See* Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual asks governmental body to provide him with information concerning himself). Thus, here, the requestor has a special right of access to his client's identifying information, and the OIG may not withhold that information from him under section 552.101 in conjunction with common-law privacy. Accordingly, the OIG must release all of the basic information from case #06-1754. As to case #06-1755, however, the OIG must withhold the identifying information of the inmate who is an alleged victim of sexual assault pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remaining basic information must be released.

In summary, the OIG must release all of the basic information from case #06-1754 pursuant to section 552.029(8) of the Government Code. The OIG must withhold the identifying information of the inmate who is an alleged victim of sexual assault in case #06-1755 pursuant to section 552.101 of the Government Code in conjunction with common-law privacy, but all other basic information must be released pursuant to section 552.029(8) of the Government Code. The remainder of the submitted information must be withheld under section 552.134 of the Government Code.⁶

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

⁶As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 or section 552.108 of the Government Code. Open Records Decision No. 597 (1991).

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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 272592

Enc. Submitted documents

c: Mr. Donald L. Crook, Jr.
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(w/o enclosures)