



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2007

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

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

OR2007-14769

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# 294243.

The Texas Department of Criminal Justice (the "department") received a request for information related to a specified use of force investigation. The department's Office of the General Counsel (the "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 claims that the information it has submitted is excepted from disclosure under sections 552.107, 552.108, and 552.134 of the Government Code. The OIG states that it has released basic information pertaining to the use of force investigation at issue and other information written by the requestor. *See* Gov't Code § 552.029(8) (requiring basic information regarding an incident involving the use of force against an inmate to be released). The OIG states that it is withholding information subject to sections 552.117

and 552.1175 pursuant to the previous determination it received in Open Records Letter 2005-01067 (2005).¹ The OIG also states that it is withholding social security numbers under section 552.147 of the Government Code.² The OIG claims that the remaining 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.³

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

(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). The OGC and OIG state that the submitted information concerns an inmate confined in a facility operated by the department. Based upon your representations and our review of the submitted information, we conclude that section 552.134 is applicable to a portion of the submitted information, and thus, it must be withheld under that section.⁴ However, a portion of the information submitted by the OIG consists of records related to therapeutic seclusion and restraint that appear to be part of a policy manual titled "UTMB Mental Health Services Departmental Policy Manual." The OIG failed to demonstrate that this information, which we have marked for release, consists of information about an inmate.

¹Open 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, 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.

²Section 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.

³You inform us that the department received clarifications of the request from the requestor. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

⁴Because our determination on this issue is dispositive, we need not address the remaining arguments against disclosure.

As no other exception to disclosure of this information is raised, it must be released to the requestor.⁵

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.

⁵We note that these policy manual records are also contained in the information which the OIG identified as having been released to the requestor.

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,

A handwritten signature in black ink, appearing to read "Justin D. Gordon". The signature is fluid and cursive, with a large loop at the end.

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 294243

Enc. Submitted documents

c: Mr. John Dufour
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Richmond, Texas 77469
(w/o enclosures)