



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 14, 2008

Ms. Patricia Fleming  
Assistant General Counsel  
TDCJ - Office of the General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2008-03462

Dear Ms. Fleming:

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# 304702.

The Texas Department of Criminal Justice (the "department") received a request for information utilized by the department to determine a named inmate's classification as a gang member. You state that some of the information will be released. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that portions of the submitted information are excepted from disclosure under section 552.134 of the Government Code. Section 552.134 relates to information about inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 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). You state that portions of the submitted information pertain to non-death row inmates who were confined in a facility operated by the department. You

also state that portions of the submitted information concern an inmate while he was incarcerated with the department for previous non-capital offenses and is not information about an inmate sentenced to death. Because portions of the information concern non-death row inmates or were not created at a time when the inmate was sentenced to death and are not maintained in the inmate's current death row file, we find that section 552.134(a) is applicable and this information must be withheld under section 552.134(a) of the Government Code. Furthermore, we conclude that none of this information is subject to release under section 552.029 of the Government Code. While we note that the requestor is an attorney who is representing the inmate, an attorney representing an inmate has no greater right of access to information about the inmate than the general public. *See* Gov't Code § 552.028(a)(2).

We now address your argument under section 552.108(b)(1) of the Government Code for the remaining submitted information. Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." *Id.* § 552.108(b)(1); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov't Code § 552.108(b)(1) protects information which, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement and crime prevention. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

This office has on numerous occasions concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.,* Open Records Decision Nos. 531 (1989) (holding that predecessor to section 552.108 excepts detailed guidelines regarding police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that predecessor to section 552.108 excepts sketch showing security measures for execution). You inform us that release of the remaining information would reveal Security Threat Group ("STG") information and thus interfere with law enforcement by impairing the department's ability to monitor and manage certain prison gangs. You state that release of this information "could compromise the security and safety of certain prison units in that reprisals might be directed against the named inmates by rival gang members." You argue further that "[r]eprisals might even be directed against [the named inmate] by his own gang because he allowed the prison officials to get hold of the information." Based on your arguments and our review of the information at issue, we agree that the release of STG information would interfere with law enforcement. Accordingly, the department may withhold the remaining information from disclosure under section 552.108(b)(1) of the Government Code.

In summary, the information regarding the named inmate's non-death row incarceration as well as information regarding other non-death row inmates must be withheld under section 552.134(a) of the Government Code. The remaining information may be withheld by the department under section 552.108(b)(1) of the Government Code.<sup>1</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments.

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,



Benjamin A. Diener  
Assistant Attorney General  
Open Records Division

BAD/mcf

Ref: ID# 304702

Enc. Submitted documents

c: Mr. Alexander Calhoun  
Law office of Alexander L. Calhoun  
3301 Northland Drive, Suite 215  
Austin, Texas 78731  
(w/o enclosures)