



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 1, 2008

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

OR2008-03663A

Dear Mr. West:

This office issued Open Records Letter No. 2008-03663 (2008) on March 19, 2008. We have examined this ruling and determined that an error was made in its issuance. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on March 19, 2008. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")).

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# 305005.

The Texas Department of Criminal Justice's Office of the Inspector General (the "OIG") received a request for all information pertaining to a former parole officer. The OIG states that it will provide some of the requested information to the requestor. The OIG states that it is withholding information pursuant to the previous determination it received in Open Records Letter No. 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

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.

that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions claimed and reviewed the submitted information.

Initially, we note that the former parole officer's social security number, date of birth, driver's license number, home telephone number, work telephone number, and e-mail address are redacted in some of the submitted information. Generally, the requestor has a special right of access to her own social security number, driver's license number, and e-mail address. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). However, in this instance, you inform us that the OIG's master copy of these records is in redacted form and that is the only format in which they exist in the OIG's files. Therefore, the OIG is not required to release these documents in unredacted form.³

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

(3) a person directly identified in any proposed plan of release for an inmate.

...

(c) The [department], on request or in the normal course of official business, shall provide information that is confidential and privileged under Subsection (a) to:

(1) the governor;

³We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(2) a member of the [B]oard [of Pardons and Paroles] or a parole commissioner;

(3) the Criminal Justice Policy Council in performing duties of the council under Section 413.017 [of the Government Code]; or

(4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

...

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029 [of the Government Code].

Gov't Code § 508.313(a), (c), (f). A "releasee" is a person released on parole or to mandatory supervision. *Id.* § 508.001(9).

You assert that some of the information you have submitted relates to a person who was released on parole. After reviewing your arguments, we agree that some of the information the you have submitted is confidential pursuant to section 508.313. The requestor is not an entity authorized to obtain the information at issue under section 508.313(c). This information is also not made public under section 552.029 of the Government Code. Accordingly, the OIG must withhold the information we have marked under section 552.101 in conjunction with section 508.313 of the Government Code.

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

Id. § 552.134(a). Some of the submitted information concerns an inmate confined in a facility operated by the department. We find that none of the exceptions in section 552.029 are applicable. Thus, we find that the OIG must withhold the information we have marked under section 552.134.

You also raise section 552.108(b)(1) of the Government Code, which 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." 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. *See id.* §§ 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 assert that the release of the consent to monitor forms would compromise security measures and interfere with future investigations. Having considered your arguments and the submitted information, we conclude that the OIG may withhold the consent to monitor forms under section 552.108(b)(1).

In summary, the OIG must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code and section 552.134 of the Government Code. The OIG may withhold the consent to monitor forms under section 552.108(b)(1) of the Government Code. The remaining submitted information must be released.⁴

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,

⁴As our ruling is dispositive, we need not address the OIG's remaining arguments against disclosure.

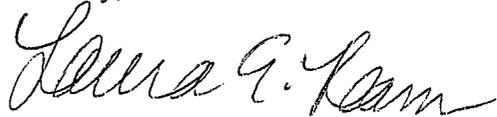
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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.

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 305005

Enc. Submitted documents

c: Ms. Lynn Klahsen
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Richmond, Texas 77469
(w/o enclosures)