



ATTORNEY GENERAL OF TEXAS  
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OR2008-05230

Dear Ms. Fleming and 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# 307867.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a deceased inmate of the department, as well as monitoring documents, audit documents, and complaints related to the Formby Unit over a specified period of time.<sup>1</sup> The department's Office of the General Counsel (the "OGC") and Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate documents that each seeks to withhold from disclosure. The OIG states that it is releasing some of the requested information to the requestor with redactions pursuant to the previous

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<sup>1</sup>We note that the department asked for clarification regarding a portion of this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). However, we also note that the OGC has submitted a representative sample of the information for which the department requested clarification; therefore, we assume that the department has made a good-faith effort to related that portion of the request to information in the possession of the department. Open Records Decision No. 561 (1990).

determination issued by this office in Open Records Letter No. 2005-01067 (2005).<sup>2</sup> The OIG also states that it is withholding social security numbers under section 552.147 of the Government Code.<sup>3</sup> The OIG claims that the remaining information it has submitted is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.134 of the Government Code. The OGC 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 reviewed the submitted information, a portion of which is a representative sample.<sup>4</sup>

Initially, we note that information submitted by the OIG, which we have marked, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-04817 (2008). We presume that the pertinent facts and circumstances have not changed since the issuance of that ruling. Thus, the department must continue to rely on Records Letter No. 2008-04817 for the information we have marked.<sup>5</sup> *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

Next, we will address the OGC's claims for the information it has submitted. We note that section 552.022 of the Government Code is applicable to some of the information at issue.

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<sup>2</sup>Open 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.

<sup>3</sup>We 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).

<sup>4</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>5</sup>As our ruling is dispositive for this information, we need not consider the OIG's arguments against disclosure.

Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is expressly confidential under other law. *Id.* § 552.022(a)(17). In this instance, the information submitted by the OGC includes completed reports that are subject to section 552.022(a)(1) and court records that are subject to section 552.022(a)(17). Although the OGC raises section 552.108 of the Government Code, we note that this section is not other law that makes information confidential for the purposes of section 552.022(a)(17). *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the department may not withhold the documents subject to section 552.022(a)(17) pursuant to section 552.108 of the Government Code. However, because information that is subject to sections 552.022(a)(1) and 552.022(a)(17) may be withheld under mandatory exceptions, we will consider the OGC's claims under sections 552.101 and 552.134 of the Government Code for this information as well as the remaining information. We will also consider the OGC's claim under section 552.108 for the completed reports subject to section 552.022(a)(1) as well as the remaining information.

The OGC asserts section 552.108(b)(1) of the Government Code as an exception to disclosure for some of the submitted information. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) 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) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (Gov't Code § 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The OGC asserts that section 552.108 is applicable to the submitted Security Review Checklists and Inter-Office Communications (“IOCs”). The OGC states that if these confidential policies and protocols were released, then enterprising inmates will devise ways to defeat the security features of the unit and could compromise general department and unit security. Upon review of the submitted information and the OGC’s arguments, we agree that section 552.108(b)(1) is applicable to most of the information at issue. However, we find that the OGC has failed to establish how public access to the remaining information would interfere with law enforcement or endanger officers. Accordingly, we have marked a representative sample of the information the department may withhold in the Security Review Checklists under section 552.108(b)(1) of the Government Code. The department may also withhold the additional information we have marked under section 552.108(b)(1). The remaining information at issue may not be withheld on this basis.

With regard to the remaining information, we address section 552.134 of the Government Code, which relates to inmates of the department and provides in relevant part:

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] 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 in part 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:

(1) the inmate’s name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

...

(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.

Upon review of the OGC's arguments and the submitted information, we conclude that section 552.134 is applicable to most of the remaining records as information about inmates of the department. However, these records contain information related to the inmate's death in custody, crimes involving inmates, and a use of force investigation. Therefore, the department must release the basic information about these incidents pursuant to section 552.029. 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 basic information that must be released pursuant to section 552.029(8) of the Government Code, the department must withhold the information we have marked under section 552.134 of the Government Code. The OGC has failed to demonstrate how the remaining information relates to inmates; therefore, it may not be withheld under section 552.134 of the Government Code.

In summary, the department must continue to rely on Records Letter No. 2008-04817 for the information we have marked. The department may withhold the information we have marked as a representative sample of the Security Review Checklists under section 552.108(b)(1) of the Government Code. The department may also withhold the additional information we have marked under section 552.108(b)(1). With the exception of basic information the department must release pursuant to section 552.029, the department must withhold the information we have marked under section 552.134 of the Government Code. The remaining information must be released.

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.

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 307867

Enc. Submitted documents

c: Mr. Ronald Rodriguez  
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(w/o enclosures)