



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2008

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

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

OR2008-06046

Dear Mr. West and 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# 309054.

The Texas Department of Criminal Justice (the "department") received a request for four categories of information pertaining to a specified employee. 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 states that it will release some of the responsive information. The OGC claims that the information it has submitted is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. The OIG states that it will release 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).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 information it has submitted is excepted from disclosure under section 552.134 of the Government Code. We have considered the exceptions claimed and reviewed the submitted information.³ We have also considered comments submitted by the requestor.⁴ See Gov't Code § 552.304 providing that an interested party may submit comments stating why information should or should not be released.

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 exception encompasses information that other statutes make confidential. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. See 8 U.S.C. § 1324a(b)(5); see also 8 C.F.R. § 274a.2(b)(4). In this instance, the release of the submitted Form I-9 would be "for purposes other than for enforcement" of the applicable federal law. A Form I-9 may only be released for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, we agree the department must withhold the Form I-9 the OGC has marked under section 552.101 in conjunction with section 1324a of title 8 of the United States Code.

Next, the OGC claims that the submitted information contains fingerprint information that is governed by sections 560.001, 560.002, and 560.003 of the Government Code, which is also encompassed by section 552.101 of the Government Code. Chapter 560 of the

¹Open Records Letter No. 2005-01067 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 this office that the department was closed on February 18, 2008.

⁴The requestor argues that the department failed to comply with the procedural requirements of section 552.301 of the Government Code. We note that a submission is timely if the document is sent via first class United States mail and bears a post office cancellation mark indicating a time within the required period. See Gov't § Code 552.308. Regardless of whether the department failed to meet its section 552.301 requirement, sections 552.101 and 552.134 of the Government Code are mandatory exceptions that constitute compelling reasons sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. See *id.* at §§ 552.007, .352.

Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). The OGC does not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprint information at issue. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

We note that some of the information submitted by the OGC is confidential under section 552.117(a)(3) of the Government Code.⁵ Section 552.117(a)(3) excepts from public disclosure 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. *Id.* § 552.117(a)(3). Thus, the department must withhold the information we have marked under section 552.117(a)(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.

Id. § 552.134(a). Most of the remaining information relates to inmates confined in a facility operated by the department. Thus, we agree that this information is subject to section 552.134. We also find that none of this information is subject to release under section 552.029 of the Government Code. Therefore, the information the OGC and the OIG has marked is excepted from disclosure under section 552.134 of the Government Code and must be withheld.

In summary, the department must withhold the marked Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The department must withhold the marked biometric information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The department must withhold the information we have marked under section 552.117(a)(3) of

⁵The Office of the Attorney General will raise a mandatory exception like section 552.117 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the Government Code. Finally, the marked information must be withheld under section 552.134 of the Government Code.⁶ The remaining submitted 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.

⁶As our ruling is dispositive, we need not address the OGC's remaining argument against disclosure.

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,

Handwritten signature of Olivia A. Maceo in black ink.

Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/mcf

Ref: ID# 309054

Enc. Submitted documents

c: Ms. Yolanda M. Torres
Attorney at Law
P.O. Box 515
Huntsville, Texas 77342-0515
(w/o enclosures)