



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2008

Ms. Patricia Fleming
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2008-07992

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# 312344.

The Texas Department of Criminal Justice (the "department") received a request for all trust fund withdrawal forms submitted by death row inmates between January 1, 2005 and March 26, 2008, and the trust fund account balances for each death row inmate as of March 25, 2008. You claim that the submitted withdrawal forms and commissary account balance spreadsheet are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information, some of which is a representative sample.¹

You contend that the requested withdrawal forms are protected from disclosure under common-law privacy. 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. Section 552.101 encompasses information made confidential by the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685

¹ 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.

(Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of this test must be established. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990). The withdrawal forms pertain to financial transactions between inmates and private citizens. Accordingly, we find this information is highly intimate or embarrassing. Furthermore, we find that there is not a legitimate public interest in the release of this information in this instance. Accordingly, the department must withhold the requested withdrawal forms under section 552.101 in conjunction with common-law privacy.

You also assert that all of the information contained within the submitted commissary account balance spreadsheet is protected by common-law privacy. In Open Records Decision No. 396, we considered whether certain types of information pertaining to inmate trust accounts were protected by common-law privacy. *See* Open Records Decision No. 396 (1983). We found that information regarding balances held in inmate accounts is highly intimate or embarrassing. *Id.* at 1. Furthermore, we concluded that there is not a legitimate public interest in inmate account balances because “the total amount an inmate has on deposit at any particular time[] does not . . . relate to the receipt or expenditure of public funds.” *Id.* at 1. Accordingly, we determined that information regarding inmate account balances is protected under common-law privacy. *Id.* at 1. Thus, in accordance with the decision in Open Records Decision No. 396, we find the inmates’ account balances in the submitted commissary account balance spreadsheet are protected by common-law privacy. We have marked this information, which the department must withhold under section 552.101 of the Government Code. You have not explained, however, how the remaining information in the spreadsheet, which includes inmates’ names and identification numbers, constitutes information determined to be protected by common-law privacy in Open Records Decision No. 396. Furthermore, you have failed to demonstrate how the remaining information constitutes highly intimate or embarrassing information. Thus, none of the remaining information in the spreadsheet may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the department must withhold the requested withdrawal forms and the inmate account balance information we have marked in the submitted spreadsheet under section 552.101 of the Government Code in conjunction with common-law privacy. 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).

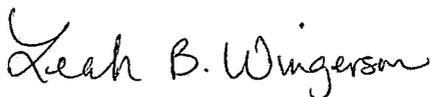
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 312344

Enc. Submitted documents

c: Ms. Carolyn Canville
Investigative Reporter
KRIV-TV, Fox 26
P.O. Box 22810
Houston, Texas 77227
(w/o enclosures)