



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2008

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
4616 Howard Lane, Suite 250
Austin, Texas 78728

OR2008-14204

Dear 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# 325057.

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for information pertaining to the requestor. The department states it will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

Initially, we note portions of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-13395 (2008). With regard to the submitted information that is identical to the information previously requested and ruled upon by this office in this prior ruling, we conclude, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on Open Records Letter No. 2008-13395 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first

type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will address the submitted arguments.

Next, you claim section 552.134 of the Government Code for the submitted information. Section 552.134 is applicable to information relating to inmates of the department and states that

[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:

(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(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029.

We conclude section 552.134(a) is generally applicable to portions of the submitted information. However, some of this information pertains to an incident involving the death of an inmate and alleged criminal conduct involving an inmate. Under section 552.029(8), basic information regarding these incidents is subject to required disclosure. *Id.* In addition, we find the department has failed to demonstrate how the submitted Security Memorandum and Healthcare Policy (the "Security Memorandum"), which we have marked, relates to inmates; therefore, this information may not be withheld under section 552.134. Thus, with the exception of the Security Memorandum and the basic information in case numbers 07-1882 and UF.15.0404.07.BC, the department must withhold the submitted information under section 552.134 of the Government Code.¹

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

You also claim section 552.108(b)(1) for the submitted Security Memorandum. Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor 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[.]” Gov’t Code § 552.108(b)(1); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, 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). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would hamper departmental efforts to detect forgeries of drivers’ licenses), 252 (1980) (statutory predecessor was 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). The statutory predecessor to section 552.108(b)(1) was not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the release of the submitted Security Memorandum would interfere with ongoing law enforcement activities. You state this information “was gathered and/or constructed to further the detection and investigation of a crime, and could be used by others in the planning and execution of a crime” and knowledge of this information could compromise prison security by being “used to facilitate an escape plan.” Based on your representations and our review, we find the release of a portion of the information at issue, which we have marked, would interfere with law enforcement. The department may withhold the information we have marked in the submitted Security Memorandum under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated how release of the remaining information in the submitted Security Memorandum would interfere with law enforcement. Accordingly, none of this information, which we have marked for release, may be withheld under section 552.108(b)(1).

In summary, to the extent any portion of the submitted information was ruled upon in Open Records Letter No. 2008-13395, the department must continue to rely on that ruling as a previous determination and withhold or release the identical information in accordance with that ruling. If the submitted information was not previously ruled upon, the department must

withhold the submitted information under section 552.134, with the exception of basic information relating to the death of an inmate and alleged crime involving an inmate and the Security Memorandum. The department may withhold the information we have marked in the Security Memorandum under section 552.108(b)(1). 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). If the governmental body does not file suit over 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).

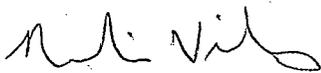
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 325057

Enc. Submitted documents

c: Mr. Phillip T. Cruz
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(w/o enclosures)