



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

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OR2008-14404

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# 324151.

The Texas Department of Criminal Justice (the "department") received a request for mileage reports for the Austin II DPO fleet for a specified time period, the work and disciplinary history of a named parole officer, and the disciplinary history of another named parole officer. 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 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).<sup>1</sup> The OIG also states that it is withholding social security numbers under section 552.147(b) of the Government Code.<sup>2</sup> The OIG claims that the information it has submitted is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.147 and 552.1175 of the Government Code. We have considered the exceptions claimed and reviewed the submitted information, a portion of which consists of a representative sample.<sup>3</sup>

Initially, the OGC informs us that the disciplinary history of one of the parole officers was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-09105 (2008). In that ruling, we concluded that the department could withhold the disciplinary history of that officer under section 552.134 of the Government Code. 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 that ruling as a previous determination and withhold the information at issue in accordance with Open Records Letter No. 2008-04569. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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).

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 section 508.313 of the Government Code, which provides in part:

- (a) All information obtained and maintained [by the Texas Department of Criminal Justice], 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:

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<sup>1</sup>Open 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.

<sup>2</sup>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.

<sup>3</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.

(1) an inmate of the institutional division [of the Texas Department of Criminal Justice] 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.

Gov't Code § 508.313(a); *see also id.* § 508.001(9) (“releasee” means a person released on parole or to mandatory supervision). We note that the information sought to be withheld under this exception by the OIG includes a portion of the information submitted by the OGC. The OIG asserts that the information at issue contains names and other identifying information regarding releasees. The OIG further notes that the requestor is not an entity authorized to obtain the submitted information under section 508.313(c). We note that the submitted information is not made public under section 552.029 of the Government Code. *See id.* § 508.313(f). Based on your representations and our review, we conclude that the OIG and the OGC 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.<sup>4</sup> However, the remaining information does not relate to a releasee of the department and thus may not be withheld under section 508.313 of the Government Code. We will address the OGC’s argument under section 552.134 for the remaining information submitted by the OGC.

The OGC raises section 552.134 for the remaining information it has submitted. Section 552.134(a) relates to inmates of the department and provides:

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.

Gov’t Code § 552.134(a). However, we note that none of the remaining information submitted by the OGC concerns inmates confined in a facility operated by or under a contract with the department. Therefore, none of the remaining information submitted by the OGC may be withheld under section 552.134 of the Government Code.

Section 552.101 of the Government Code also encompasses 560.003 of the Government Code. The public availability of fingerprints is governed by chapter 560 of the Government Code. *See Gov’t Code* §§ 560.001(1) (“biometric identifier” means retina or iris scan,

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<sup>4</sup>We note that as our ruling is dispositive, we need not address the OGC’s arguments for this information.

fingerprint, voiceprint, or record of hand or face geometry), .003 (biometric identifier in possession of governmental body is exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore the OIG must withhold the fingerprint we have marked under section 552.101 in conjunction with section 560.003 of the Government Code. Next, we address the OGC's special circumstances argument.

Section 552.101 of the Government Code also encompasses common-law privacy. Gov't Code § 552.101. Information is protected from disclosure by the common law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information may be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See Open Records Decision No. 169 (1977)*. In *Open Records Decision No. 169 (1977)*, we considered the personal safety concerns of public employees and recognized that there may be specific instances where "special circumstances" exist to except from public disclosure some of the employees' addresses. *See Open Records Decision No. 123 (1976)*. In that decision, the employees demonstrated that their lives would be placed in danger if their addresses were released to the public. ORD 169 at 7. This office further noted that the initial determination of credible threats and safety concerns should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* We noted, however, that "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* at 6.

The OGC claims that releasing the mileage reports for the Austin II DPO fleet and the information concerning the remaining parole officer would cause that parole officer and other parole officers to face an imminent threat of physical danger. You state that "the JP Court has already recognized that [the requestor] poses a known danger by virtue of its non-contact order regarding [one of the named parole officers] and its subsequent incarceration of [the requestor] for violating that no-contact order." The OGC further states that "if the information about [the parole officer] is released, then [the requestor] will have ammunition with which to harass [the parole officer] in the manner in which has harassed, threatened, and intimidated [the other parole officer]. If the travel logs of the Austin II PD's fleet are released, then [the requestor] will have knowledge of locations to which our Parole Division employees drive in order to conduct their jobs." Further, you assert that the requestor has made verbal threats toward a parole officer. After reviewing your arguments and the information at issue, we conclude that you have not demonstrated special circumstances sufficient to justify withholding the submitted information from public disclosure on that basis. Thus the OGC may not withhold any of the remaining information under section 552.101 in conjunction with special circumstances. We address section 552.108 of the Government Code for the OIG's remaining information.

Section 552.108 of the Government Code provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An 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 is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)-(b). Generally speaking, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, sections 552.108(a)(2) and (b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

We understand the OIG to assert that the release of the information at issue may interfere with an ongoing investigation. However, the OIG has not demonstrated how the release of this information, the majority of which concerns an internal investigation of one of the parole officers at issue, would interfere with law enforcement. Further, the OIG admits that the information at issue does not directly relate to any investigation the OIG is currently

conducting. Although the OIG asserts that the release of the submitted information to the requestor "would facilitate his pattern of behavior that inevitably seems to lead to criminal offenses," we find that this argument is insufficient to demonstrate that release of the remaining information would interfere with the detection, investigation, or prosecution of crime for purposes of section 552.108. Thus, the OIG may not withhold any of the remaining submitted information under section 552.108 of the Government Code.

We note that some of the OGC's and OIG's remaining submitted information contains information that is subject to section 552.117 of the Government Code.<sup>5</sup> Section 552.117(a)(3) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of the department or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(3). In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold information under section 552.117(a)(3) without the necessity of requesting a decision from this office under the Act. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Therefore, the OGC and OIG must withhold the information we have marked under section 552.117(a)(3).

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2) The OIG and OGC must withhold the Texas motor vehicle record information we have marked under section 552.130.

In summary, the OIG and the OGC must withhold the releasee information we have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code and the fingerprint we have marked under section 552.101 in conjunction with section 560.003 of the Government Code. The OIG and OGC must withhold the personal information we have marked under section 552.117(a)(3) of the Government Code and the Texas motor vehicle information we have marked under section 552.130 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

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<sup>5</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but will ordinarily not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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).

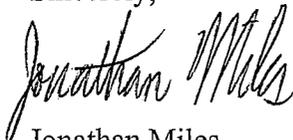
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 324151

Enc. Submitted documents

c: Mr. David Ellis  
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(w/o enclosures)