



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 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

OR2008-16039

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# 328422.

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for a specified case file relating to a former employee. You state that you 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 You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.134, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that a portion of the submitted information is the subject of a previous determination. This office issued Open Records Letter No. 2004-6370 (2004), which serves as a previous determination under section 552.301(a) of the Government Code for the department with respect to shift rosters. Therefore, pursuant to that previous determination,

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.

the department may withhold the submitted shift rosters under section 552.108(b)(1) of the Government Code without requesting an attorney general decision under that exception. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note some of the submitted information is confidential under section 552.117(a)(3) of the Government Code.² 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). 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). We note that a post office box number is not a "home address" for purposes of section 552.117.³ We note that section 552.117 protects personal privacy. Therefore, the requestor has a right of access to private information concerning herself, and that information may not be withheld from her under section 552.117. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, the department must withhold the information pertaining to other current or former employees which we have marked under section 552.117(a)(3).

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 other statutes. The submitted information includes polygraph information. Information relating to a polygraph examination is confidential under section 1703.306 of the Occupations Code. Section 1703.306 of the Occupations Code provides in relevant part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³*See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at *home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. The department has submitted information acquired from polygraph examinations. A portion of the information at issue consists of the polygraph examination results of the requestor. Thus, the department has the discretion to release the requestor's polygraph information to her. Otherwise, the department must withhold this information, and the other polygraph information we have marked, under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.134 encompasses 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 552.134 is explicitly made subject to section 552.029 of the Government Code. You state that you have already released information subject to section 552.029 to the requestor. *See* Gov't Code § 552.029. Therefore, upon review, we conclude that the department must withhold the remaining information we have marked under section 552.134 of the Government Code.

In summary, pursuant to Open Records Letter No. 2004-6370 (2004), the department may withhold the submitted shift rosters under section 552.108(b)(1) of the Government Code. The department must withhold the personal information we have marked under section 552.117(a)(3) of the Government Code. The department must also withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. However, the department may release the requestor's own polygraph information to her. Finally, the department must withhold the information we have marked under section 552.134 of the Government Code. The remaining information must be released to the requestor.⁴

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

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/jh

Ref: ID#328422

Enc. Submitted documents

c: Requestor
(w/o enclosures)