



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2009

Ms. Patricia Fleming
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Mr. John C. West
General Counsel
Texas Department of Criminal Justice
Office of the Inspector General
P.O. Box 13084
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OR2009-03046

Dear Ms. Fleming and 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# 336935.

The Texas Department of Criminal Justice ("TDCJ") received a request for the complete file of a specific former TDCJ inmate. TDCJ's Office of the General Counsel (the "OGC") and TDCJ's Office of the Inspector General (the "OIG") have submitted separate briefs and separate responsive information that each seeks to withhold from disclosure. The OGC states that it will release a portion of the requested information and claims that the remaining responsive information it has submitted to this office for review is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. The OIG states that it will release basic information from the two responsive case files it maintains, as well as certain documents written by the requestor, but will redact from these documents social security numbers belonging to current and former TDCJ employees.¹ The OIG claims that portions of

¹In Open Records Letter No. 2005-01067 (2005), this office issued a previous determination that authorizes TDCJ to withhold the social security numbers of current and former TDCJ employees under section 552.117(a) without the necessity of requesting a decision from this office under the Act. See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

its submitted information are excepted from disclosure under sections 552.108, 552.117, 552.1175, and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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. The OGC raises section 552.101 in conjunction with section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained [by TDCJ], 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:

(1) an inmate of the institutional division [of TDCJ] 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.

Id. § 508.313(a); *see also id.* § 508.001(9) ("releasee" means a person released on parole or to mandatory supervision). The OGC states, and our review confirms, that portions of the submitted information originated from TDCJ's Parole Division's file on the inmate and were generated while the inmate was "an inmate of the institutional division subject to release to mandatory supervision, or parole or executive clemency" or while he was a "releasee." We therefore agree that these portions of the submitted information are confidential pursuant to section 508.313. The OGC does not inform us that the requestor is an entity authorized to obtain the submitted information under section 508.313(c). This information is also not made public under section 552.029 of the Government Code. *See id.* § 508.313(f). We therefore conclude that TDCJ must withhold the portions of the submitted information for which the OGC has raised section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

The OGC claims that the remainder of its submitted information is excepted from disclosure by section 552.134 of the Government Code. The OIG also raises this same exception with regard to all of its submitted information. Section 552.134 relates to TDCJ inmates 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). The OGC and the OIG state, and the submitted information reflects, that the person named in the request is a former inmate who was confined in a facility operated by TDCJ. We note that this office has repeatedly and consistently ruled that section 552.134 is also applicable to former TDCJ inmates. *See, e.g.*, Open Records Letter Nos. 2008-17171 (2008), 2008-16838 (2008), 2008-16612 (2008), 2008-13870 (2008). Thus, we agree that section 552.134 is generally applicable to the information submitted by the OIG and the information submitted by the OGC that is not subject to section 508.313 of the Government Code. However, section 552.134 is explicitly made subject to section 552.029, which provides:

Notwithstanding Section 508.313 or 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under [the Act]:

- (1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or
- (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.

Gov't Code § 552.029. Because the information submitted by the OIG relates to an alleged crime involving the inmate named in the request, TDCJ must release basic information regarding this alleged crime. The basic information that must be released includes the time and place of the incident, the names of inmates and of any department employees who were involved, a brief narrative of the incident, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. The OIG states that it will release such information, and we conclude that TDCJ must withhold the remainder of the OIG's submitted information pursuant to section 552.134 of the Government Code. Similarly, TDCJ must release any information subject to section 552.029 from the information submitted by the OGC and must withhold the remainder of the OGC's submitted information, other than that subject to section 508.313, under section 552.134.²

In summary, TDCJ must withhold all of the information submitted by both the OIG and the OGC under section 552.134 of the Government Code and section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code, except for information that is subject to section 552.029 of the Government Code, which TDCJ must release.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

²As our ruling is dispositive, we need not address either the OGC's or OIG's remaining arguments against disclosure of the information at issue.

Ref: ID# 336935

Enc. Submitted documents

cc: Requestor
(w/o enclosures)