



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2009

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

Mr. John C. West
General Counsel
Texas Department of Criminal Justice
Office of the Inspector General
P.O. Box 13084
Austin, Texas 78711

OR2009-06460

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# 342977.

The Texas Department of Criminal Justice (the "department") received a request for all records pertaining to a named releasee. The department's Office of the General Counsel (the "OGC") and the department's Office of the Inspector General (the "OIG") have submitted separate briefs to this office. 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 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 The OIG also states that it is withholding social security numbers under section 552.147(b) of the Government Code.² The OIG claims that the information it has submitted is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.134, and 552.147 of the Government Code. We have considered the submitted arguments 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. This section encompasses section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained, 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 the department] 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.

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029 [of the Government Code].

Id. § 508.313(a). The OGC states, and our review confirms, that portions of the submitted information originated from the department'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. We also note that some of the information the OGC marked pertains to the named inmate as a releasee. We therefore agree that these portions of the submitted information are confidential pursuant to section 508.313.

¹Open Records Letter No. 2005-01067 (2005) 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.

²Section 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.

The OGC informs us that the requestor is not an entity authorized to obtain the submitted information under section 508.313(c). Thus, we find that the OGC must generally withhold the portion of the submitted information we have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

The OGC and OIG both assert that the remaining information is excepted from disclosure under section 552.134 of the Government Code, which is applicable to information relating to inmates of the department. This exception 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). The remaining information concerns an inmate who was confined in a facility operated by the department. Therefore, we agree that section 552.134 is applicable to the remaining information. Thus, the OGC and OIG must generally withhold the remaining information under section 552.134 of the Government Code.

We note that sections 508.313 and 552.134 are explicitly made subject to section 552.029 of the Government Code. *See id.* § § 508.313(f); 552.134. Section 552.029 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 [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). Pursuant to section 552.029(8), basic information regarding alleged crimes involving inmates and incidents involving the use of force are subject to required disclosure. Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Thus, to the extent the submitted information consists of alleged crimes involving inmates and incidents involving the use of force, the OGC and OIG must release basic information about these incidents pursuant to section 552.029(8) of the Government Code.

In summary, with the exception of basic information, the OGC must withhold the information it has submitted under section 552.101 of the Government Code in conjunction

with section 508.313 and section 552.134 of the Government Code. With the exception of basic information, the OIG must withhold the information it has submitted under section 552.134 of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/jb

Ref: ID# 342977

Enc. Submitted documents

c: Requestor
(w/o enclosures)