



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2009

Mr. James Mu
Assistant General Counsel
TDCJ – Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-08829

Dear Mr. Mu:

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# 347813.

The Texas Department of Criminal Justice (“TDCJ”) received a request from a former TDCJ correctional officer for the requestor’s complete personnel file. You state that TDCJ will release some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.134 of the Government Code provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by [TDCJ] 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 information for which you assert section 552.134 pertains to disciplinary action against a former corrections officer. This disciplinary information contains inmate-identifying information, which we have marked, that TDCJ must withhold under section 552.134. However, the remaining information at issue does not constitute “information about an inmate” for purposes of section 552.134, and TDCJ may not withhold the remaining information on that basis.

You assert that some of the remaining information at issue is excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when release of such information would interfere with law enforcement or prosecution. *See id.* § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must explain how and why release of the requested information would interfere with law enforcement or prosecution. *See* Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (Gov’t Code § 552.108 is 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). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state that release of some of the submitted employee performance logs would interfere with law enforcement or prosecution by revealing specific TDCJ policies and procedures, the knowledge of which could help prisoners plan escapes or other illegal activities. Based on your representations and our review, we conclude that release of the employee performance logs for which you have raised section 552.108(b)(1) would interfere with law enforcement or prosecution. Accordingly, TDCJ may withhold this information, which we have marked, under section 552.108(b)(1) of the Government Code.

In summary, TDCJ: (1) must withhold the information we have marked under section 552.134 of the Government Code; (2) may withhold the information we have marked under section 552.108(b)(1) of the Government Code; and (3) must release the remainder of the submitted information.¹

¹We note that the submitted information contains social security numbers belonging to persons other than the requestor. 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.

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/rl

Ref: ID# 347813

Enc. Submitted documents

cc: Requestor
(w/o enclosures)