



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2009

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

OR2009-08921

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# 347439 (OIG ORR #OR-2009-00110).

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for a copy of case number 2001-0659. You state you have released some of the requested information with redactions pursuant to the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005)¹ and section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.134 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, the department may withhold the submitted shift rosters under section 552.108(b)(1) of the

¹Open Records Letter No. 2005-01067 authorizes the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of its current or former employees under section 552.117(a)(3) of the Government Code, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act. *See* Open Records Decision No. 673 (2001) (listing elements of first type of previous determination under section 552.301(a)).

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. *See* Gov't Code § 552.147(b).

Government Code. *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 a portion of Exhibit B includes fingerprint 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 information that other statutes make confidential, such as section 560.003 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *Id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are 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 department must withhold the fingerprint information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You assert much of the remaining information is excepted under section 552.134 of the Government Code. 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.

Id. § 552.134(a). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part:

[n]otwithstanding [s]ection . . . 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). Upon review of the remaining documents, we conclude section 552.134(a) is generally applicable to this information. We note the information at issue pertains to an

inmate's death in custody and an alleged crime involving inmates. Therefore, the department must release basic information about this incident pursuant to section 552.029. 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. Therefore, with the exception of basic information, which you state has been released, the department must withhold the majority of information as we have marked in Exhibit C pursuant to section 552.134 of the Government Code. We find, however, the department has failed to demonstrate how the remaining information is subject to section 552.134; therefore, no portion of the remaining information may be withheld under section 552.134.

You assert the remaining submitted break roster and diagram of the department prison unit are excepted from disclosure under section 552.108(b)(1) of the Government Code, which excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 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*, S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded 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 (1989) (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 the submitted break roster and diagram of the department prison unit would reveal internal department security processes and procedures. You further state that this information "could be used by others in the planning and execution of a crime" and that knowledge of this information could compromise prison security by being "used to facilitate an escape plan." Based on your representations and our review, we find the release of the break roster and diagram, which we have marked, would interfere with law enforcement. Accordingly, the department may withhold this information under section 552.108(b)(1) of the Government Code.

In summary, the department must withhold the fingerprint information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. With the exception of basic information, the department must withhold the information we have marked pursuant to section 552.134 of the Government Code. The department may withhold the information we have marked under section 552.108(b)(1) of the Government Code.³

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 347439

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure for the submitted information.