



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2009

Mr. James Mu
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
Office of Inspector General
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

OR2009-11745

Dear Mr. Mu 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# 352820.

The Texas Department of Criminal Justice (the "department") received a request for all information pertaining to the misconduct of a named employee. 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 it will release some of the responsive information. The OGC states the responsive information it has submitted to this office for review is excepted from disclosure under section 552.134 of the Government Code. The OIG states it has 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 The OIG states that some responsive information has been destroyed pursuant to the department's record retention schedule.³ The OIG claims that the information it has submitted is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, the OIG states 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 OIG may withhold the submitted shift roster under section 552.108(b)(1) of the Government Code. *See* Open Records Decision No. 673 at 7-8 (2001) (establishing criteria for previous determinations).

Section 552.134 of the Government Code relates to inmates of the department 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 [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, which provides in relevant part:

[n]otwithstanding ... Section 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:

¹ Open 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)).

² 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. *See* Gov't Code § 552.147(b).

³ The Act does not require a governmental body to release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(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). The submitted information consists of investigations related to the alleged mistreatment of inmates confined in a facility operated by or under contract with the department. Thus, we agree portions of the submitted information are subject to section 552.134. We note, however, case numbers UF.13.3250.98 and UF.20.3812.99 pertain to alleged uses of force. Basic information regarding a use of force is subject to required disclosure under section 552.029(8) of the Government Code. Basic information includes, among other things, names of inmates directly involved in the incident. Therefore, the inmate's identifying information in case numbers UF.13.3250.98 and UF.20.3812.99 is subject to release under section 552.029(8) and may not be withheld under section 552.134. Furthermore, the remaining information pertains to alleged misconduct by a former corrections officer. This disciplinary information does not constitute information about an inmate for purposes of section 552.134 and may not be withheld on that basis. Consequently, no part of the remaining information may be withheld under section 552.134 of the Government Code.⁴

We note some of the remaining information falls within the scope of section 552.117 of the Government Code.⁵ 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 or the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. *Id.* § 552.117(a)(3). Therefore, the department must withhold the information we have marked pursuant to section 552.117(a)(3) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.134 of the Government Code and section 552.117 of the Government Code. The remaining information must be released.

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.

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁵ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A large, stylized handwritten signature in black ink, appearing to read 'CS', is written over the signature line and extends across the middle of the page.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 352820

Enc. Submitted documents

cc: Requestor
(w/o enclosures)