



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 12, 2010

Mr. James Mu  
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OR2010-04804

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# 375537.

The Texas Department of Criminal Justice (the "department") received a request for all Emergency Action Center reports generated from the Lane Murray Unit during a specified time period, and all e-mails containing the requestor's name that were generated during a particular period of time by certain named individuals. You state that some responsive information has been or will be made available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that Items 1, 2, and 3 are 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 the information at issue details department procedures regarding the lockdown and relates to unit security. Based on your representations and our review, we conclude that release of the information for which you have raised section 552.108(b)(1) would interfere with law enforcement or prosecution. Accordingly, the department may withhold Items 1, 2, and 3 under section 552.108(b)(1) of the Government Code.

You claim that the remaining submitted information is excepted from public disclosure under section 552.134 of the Government Code. Section 552.134 relates to department 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.

Gov’t Code § 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 information, we agree that some of this information consists of records pertaining to individuals confined as inmates in a facility operated by the department and is, therefore, subject to section 552.134. We note, however, that some of the information at issue relates to alleged crimes involving inmates. Thus, while the department must generally withhold the records we have marked under section 552.134, the department must release basic information regarding the crimes involving inmates pursuant to section 552.029(8), unless this basic information is otherwise excepted from disclosure under the Act.<sup>1</sup>

The remaining information concerns visitor misconduct and the lockdown. These records contain inmate-identifying information, which we have marked, that the department 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 the department may not withhold any of this information on that basis.

Although not excepted from disclosure under section 552.134, we note that some of the basic information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy.<sup>2</sup> The doctrine of common law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Information that tends to identify a victim of sexual assault is protected under common law privacy. See Open Records Decision Nos. 393 at 2 (1983), 339 (1982); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). In this instance, each of the complainants in Incident Numbers I-19581-12-09 and I-19805-12-09

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<sup>1</sup>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.

<sup>2</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the common law right of privacy. Gov't Code § 552.101.

is a victim of an alleged sexual assault. Therefore, the department must withhold the complainants' identifying information in Incident Numbers I-19581-12-09 and I-19805-12-09 under section 552.101 in conjunction with common law privacy.

You also raise section 552.101 of the Government Code in conjunction with constitutional privacy for inmate visitation records. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fadlo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7 (1987). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); Open Records Decision No. 455 at 6-7 (1987). This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* Open Records Decision No. 455 at 7 (1987). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

This office has applied privacy to protect certain information about incarcerated individuals. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). Citing *State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976) as authority, this office held that those individuals who correspond with inmates possess a "first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure," and that this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. ORD 185. The information at issue in Open Records Decision No. 185 was the identities of individuals who had corresponded with inmates. In Open Records Decision No. 185, our office found that "the public's right to obtain an inmate's correspondence list is not sufficient to overcome the first amendment right of the inmate's correspondents to maintain communication with him free of the threat of public exposure." ORD 185. Implicit in this holding is the fact that an individual's association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined that inmate visitor and mail logs which identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. ORD 430, 428. Further, we recognized that inmates had a constitutional right to visit with outsiders and could also be threatened if their names were released. *See* ORD 185. The rights of those individuals to anonymity was found to outweigh the public's interest in this information. *Id.*; *see* ORD 430 (list of inmate visitors protected by constitutional privacy of both inmate and visitors). Upon review, we find that some of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the inmate

visitation information we have marked must be withheld under section 552.101 in conjunction with constitutional privacy.

In summary, the department may withhold Items 1, 2, and 3 under section 552.108(b)(1) of the Government Code. Except for basic information, the department must withhold (1) the information we have marked under section 552.134 of the Government Code; (2) the complainants' identifying information in Incident Numbers I-19581-12-09 and I-19805-12-09 under section 552.101 in conjunction with common law privacy; and (3) the inmate visitation information we have marked under section 552.101 in conjunction with constitutional privacy. The remaining information must be released.<sup>3</sup>

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](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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 375537

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we do not address your remaining claims.