



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2010

Mr. Erik Brown
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
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Mr. John C. West
General Counsel
Office of Inspector General
Texas Department of Criminal Justice
4616 Howard Lane, Suite 250
Austin, Texas 78728

OR2010-05898

Dear Mr. Brown 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# 376936 (OIG File: OR-2010-00028).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the requestor. 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 indicates it will release some of the responsive information. The OGC states a portion of the responsive information it has submitted to this office for review is excepted from disclosure under sections 552.108 and 552.134 of the Government Code. The OIG states it has released some of the requested information with

redactions pursuant to section 552.147 of the Government Code¹ and the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).² And the OIG claims that the submitted information is excepted from disclosure under sections 552.108 and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.134(a) of the Government Code 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 [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 submitted information concerns an investigation related to a former department employee. Thus, we agree portions of the submitted information are subject to section 552.134. Further, none of the information at issue is subject to release under section 552.029 of the Government Code. Accordingly, the department must withhold the information the OGC has marked in its documents and the information we have marked in the OIG's documents pursuant to section 552.134 of the Government Code. The remaining information, however, pertains to current or former department employees. Thus, the OIG has failed to demonstrate how this information is about an inmate. Accordingly, no portion of the remaining information in the OIG's file may be withheld under section 552.134.

The OGC and OIG next claim portions of the information are excepted from disclosure under section 552.108(b). Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov't Code § 552.108(b)(1) protects information which, if

¹ 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).

² 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 second type of previous determination under section 552.301(a)).

released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement and crime prevention. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

This office has on numerous occasions concluded that section 552.108 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) (holding that predecessor to section 552.108 excepts detailed guidelines regarding police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that predecessor to section 552.108 excepts sketch showing security measures for execution).

The OGC and OIG inform us that release of some of the remaining information at issue would reveal security threat group information and thus interfere with law enforcement by impairing the department's ability to monitor and manage prison gangs. The OGC and OIG further state that release of the information at issue could lead to violence against correctional officers or the general public. Based on these arguments and our review, we conclude that release of the information the OGC has marked and the information we have marked in the OIG's documents would interfere with law enforcement and crime prevention. Therefore, that information may be withheld under section 552.108(b)(1) of the Government Code.

We note some of the remaining information falls within the scope of section 552.117 of the Government Code. 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. Gov't Code § 552.117(a)(3). Therefore, the OIG 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 marked under section 552.134 of the Government Code. The department may withhold the information marked under section 552.108 of the Government Code. The department must withhold the information marked under 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.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Schulz', is written over a large, faint, stylized watermark or signature in the background.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/rl

Ref: ID# 376936

Enc. Submitted documents

cc: Requestor
(w/o enclosures)