



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2010

Mr. John C. West  
General Counsel  
Office of the Inspector General  
Texas Department of Criminal Justice  
4616 Howard Lane, Suite 250  
Austin, Texas 78728

OR2010-06385

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# 377890 (OIG ORR No. 2010-00032).

The Texas Department of Criminal Justice's (the "department") Office of the Inspector General ("OIG") received a request for copies of all documents involving the requestor, including payroll status change forms, from June 1, 2007 to February 10, 2010.<sup>1</sup> You state OIG will release some information from investigative file number 2007-1363 to the requestor. You state OIG will make redactions to the information it will release pursuant to section 552.147 of the Government Code.<sup>2</sup> You claim the remaining documents are 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.

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<sup>1</sup>The requestor sent the same request to the department but subsequently withdrew that request. Accordingly, this ruling only addresses the request submitted to OIG.

<sup>2</sup>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. Gov't Code § 552.147(b).

We note you have not submitted information responsive to the request for payroll status change forms. To the extent information regarding this portion of the request existed on the date OIG received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You seek to withhold most of the submitted documents from disclosure under section 552.134 of the Government Code. Section 552.134, which relates to inmates and former inmates of the department, provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 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 requestor seeks information pertaining to her employment. The submitted documents are records from OIG's investigative file pertaining to an inappropriate relationship between the requestor and an inmate. Because this information concerns the requestor's employment with the department, these records constitute information about a department employee and not information about an inmate. Therefore most of this information is not subject to section 552.134. These records, however, contain the identifying information of an inmate, which is normally subject to section 552.134. However, the legislature explicitly made section 552.134 subject to section 552.029 of the Government Code. *Id.* § 552.134(a). Under section 552.029(8), basic information regarding an alleged crime involving an inmate may not be withheld under section 552.134. *Id.* § 552.029(8). Because this information concerns an alleged crime involving an inmate, the inmate's identity is basic information under section 552.029(8) and may not be withheld under section 552.134.<sup>3</sup> *Id.* A portion of the submitted documents, however, are pages from the inmate's institutional file. These pages are information about an individual confined as an inmate in a facility operated by the department and are, therefore, subject to section 552.134. We find the exceptions in section 552.029 are not applicable to these pages. Therefore, these pages, which we have marked, must be withheld under section 552.134.<sup>4</sup> We will next consider your argument under section 552.108 for the remaining information.

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<sup>3</sup>Basic information includes the time and place of the incident, the names of inmates and department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident.

<sup>4</sup>As we are able to make this determination, we need not address your arguments under section 552.101 for this information.

Section 552.108(b)(1) 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 (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 generally assert the submitted documents contain investigative techniques employed by OIG. You have not, however, identified these techniques or explained how release of any specific procedures or techniques contained in the submitted documents will interfere with law enforcement. You also assert a diagram and description of the physical arrangement of the facility is protected under section 552.108(b)(1). You explain this sort of information could "serve as the key to an escape, an abduction[,] or some other criminal act." Based on these representations and our review of the information at issue, we agree the release of the diagram we marked would interfere with law enforcement. Accordingly, OIG may withhold the diagram we marked under section 552.108(b)(1).

We note the remaining information contains criminal history record information ("CHRI") which is confidential by statute. 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. Section 552.101 encompasses information protected by chapter 411 of the Government Code, which deems confidential CHRI. CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565

(1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Sections 411.083(b)(1) and 411.089 (a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See* Gov't Code § 411.089(b)(1). Upon review, we find the Federal Bureau of Investigation ("FBI") number we marked constitutes CHRI generated by the FBI which must be withheld pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.

In summary, OIG must withhold the pages containing inmate information we marked under section 552.134 of the Government Code. OIG may withhold the diagram we marked under section 552.108(b)(1). OIG must withhold the FBI number we marked under section 552.101 in conjunction with section 411.083 of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released.<sup>5</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,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

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<sup>5</sup>The records subject to release contain a small amount of information that would be excepted from general disclosure under exceptions and laws designed to protect the requestor's privacy. Under section 552.023 of the Government Code, the requestor has a right to her private information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's authorized representative to whom information relates on grounds that information is considered confidential under privacy principles). Thus, should OIG receive another request for these same records from a person who would not have a right of access to the private information, OIG should resubmit this same information and request another ruling from this office. *See id.* §§ 552.301(a), .302.

Ref: ID# 377890

Enc. Submitted documents

c: Requestor  
(w/o enclosures)