



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2010

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

OR2010-07538

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# 380503.

The Texas Department of Criminal Justice's (the "department") Office of the Inspector General (the "OIG") received a request for eighteen categories information related to a named offender. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 the doctrine of common-law privacy, which 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). Two of the submitted investigation files pertain to alleged sexual assaults. Generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, a governmental body is required to withhold all of the information at issue when the requestor knows the identity of the alleged sexual assault victim. *See* ORD 393. In this instance, the request reflects the requestor knows the identity of the alleged sexual assault victim listed in the submitted investigation files. Therefore, withholding only the alleged victim's identity from the requestor would not preserve the alleged victim's common-law right of privacy.

Accordingly, investigation file numbers #IF.SR.0313.2007.AH and #IF.SA.1041.2006.CY must be withheld in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

Section 552.134(a) of the Government Code relates to inmates and former inmates of the department and provides in relevant part the following:

(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 the following:

Notwithstanding Section 508.313 or 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) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
 - (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
 - (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
 - (4) the county and court in which the inmate was convicted;
 - (5) the inmate's earliest or latest possible release dates;
 - (6) the inmate's parole date or earliest possible parole date;
 - (7) any prior confinement of the inmate by [TDCJ] or its predecessor;
- or

¹As our ruling is dispositive, we need not address the OIG's remaining arguments against disclosure of this information.

(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. The OIG claims the entirety of the remaining information consists of information about department inmates for purposes of section 552.134. However, we find that some of the remaining information is subject to section 552.029 in this instance. Thus, the department may not withhold the information that is subject to section 552.029. Accordingly, with the exception of the information subject to section 552.029, the department must withhold the remaining information under section 552.134 of the Government Code.²

In summary, investigation file numbers #IF.SR.0313.2007.AH and #IF.SA.1041.2006.CY must be withheld in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of information subject to section 552.029 of the Government Code, the department must withhold the remaining information under section 552.134 of the Government Code.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

²As our ruling is dispositive, we need not address the OIG's remaining arguments against disclosure of this information.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)