



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 20, 2010

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OR2010-10768

Dear Ms. Fleming, 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# 387380.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the requestor's termination. 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 section 552.134 of the

Government Code. OIG states it plans to release the basic information to the requestor.<sup>1</sup> See Gov't Code §§ 552.029(8) (stating basic information regarding an alleged crime involving an inmate may not be withheld under section 552.134), .108(c) (stating basic information about arrested person, arrest, or crime may not be withheld under section 552.108); Open Records No. 127 (1976) (summarizing types of information considered to be basic information). In releasing basic information, the OIG states it will make redactions pursuant to section 552.147 of the Government Code and the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).<sup>2</sup> The OIG claims that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.134 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov't Code § 552.108(a)(1). OIG asserts the information in Exhibit C relates to an open criminal investigation by OIG investigators, and that release of anything other than basic information would seriously compromise the investigation. We note that section 552.108 is generally not applicable to records of an internal investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). OIG explains, however, that release of Exhibit C could compromise the integrity of an investigation into alleged criminal conduct in a correctional facility. Based upon this representation, we conclude the release of Exhibit C would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of*

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<sup>1</sup>We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Because such information may be confidential with respect to the general public, if the OIG receives another request for this information from an individual other than this requestor, it should again seek a ruling from this office. See Gov't Code §§ 552.301, .302.

<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. 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) of the Government Code).

*Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold the information OIG has marked as Exhibit C pursuant to section 552.108(a)(1) of the Government Code.<sup>3</sup>

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. These records, however, contain the identifying information of inmates, which is subject to section 552.134. Further, none of the information at issue is subject to release under section 552.029 of the Government Code. Thus, we agree portions of the remaining information are subject to section 552.134. Accordingly, the department must withhold the information the OIG has marked in Exhibit B and the information we have marked in the OGC's documents pursuant to section 552.134 of the Government Code.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 1703.306 of the Occupations Code which provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

*Id.* § 1703.306. We have marked information acquired from a polygraph examination in OGC's documents. We note that the department has the discretion to release the portion of the marked information that pertains to the requestor pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees).

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Otherwise, the department must withhold the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

In summary, the department may withhold the information OIG has marked as Exhibit C pursuant to section 552.108(a)(1) of the Government Code. The department must withhold the information the OIG has marked in Exhibit B and the information we have marked in the OGC's documents pursuant to section 552.134 of the Government Code. The polygraph information we have marked is confidential under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code, but the department has the discretion to release the information related to the requestor pursuant to section 1703.306(a)(1) of the Occupations 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](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

Ref: ID# 387380

Enc. Submitted documents

c: Requestor  
(w/o enclosures)