



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2010

Mr. James Mu
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, TX 77342-4004

OR2010-17069

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# 399724.

The Texas Department of Criminal Justice (the "department") received a request for reports pertaining to suicide or suicide attempts at any facilities managed by GEO Group, Inc. that are in the department's jurisdiction over a specified period of time. You state the department has released or will release some of the requested information. You claim 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 the information you have marked is 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* 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*, 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 the marked information consists of a to-scale drawing of a jail facility. You assert release of this information would cause a security breach and jeopardize the safety of inmates, guards, and the general public. You argue this information could be used by inmates to "facilitate their escapes, engage in sexual encounters or assaults, [and] conduct trafficking in contraband[.]" Based on your representations and our review, we conclude that release of the marked information would interfere with law enforcement or prosecution. Accordingly, the department may withhold the marked information 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 this information consists of records pertaining to individuals confined as inmates in facilities operated by the department and is, therefore, subject to section 552.134. We note, however, that some of the information at issue relates to the deaths of inmates and incidents involving the use of force. Thus, while the department must generally withhold the remaining information under section 552.134, the department must release basic information regarding the deaths of inmates and the incidents involving the use of force pursuant to section 552.029(8), unless this basic information is otherwise excepted from disclosure under the Act.¹

We note the basic information pertaining to incidents involving the use of force contains information that is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy.² 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.

In this instance the requestor knows the nature of the incidents at issue. Therefore, withholding only certain details of the incidents from the requestor would not preserve the individuals' common-law right of privacy. Thus, to protect the privacy of the individuals to whom the information at issue relates, we determine that the department must withhold the the identities of these individuals. Accordingly, in releasing basic information pertaining to the incidents involving the use of force, the department must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department may withhold the marked information under section 552.108(b)(1) of the Government Code. Except for basic information pertaining to

¹Basic 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.

²Section 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.

the deaths of inmates or incidents involving the use of force, the department must withhold the remaining submitted information under section 552.134 of the Government Code.³ However, in releasing basic information, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 399724

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we do not address your remaining arguments against disclosure.