



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 27, 2011

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

OR2011-01479

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# 407125 (OIG File No. ORR-2010-00238).

The Texas Department of Criminal Justice (the "department") received a request for documents concerning the investigation related to a named department employee's dismissal. The department's Office of the Inspector General (the "OIG") has submitted correspondence to this office. The OIG states it will release some information to the requestor with redactions made pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).<sup>1</sup> The OIG also states it will withhold social security numbers under section 552.147 of the Government Code.<sup>2</sup> The OIG claims 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 the OIG claims and reviewed the submitted information.

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<sup>1</sup>Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code. *See* Open Records Decision No. 673 (2001) (listing elements of first type of previous determination under section 552.301(a) of the Government Code).

<sup>2</sup>We note 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.

We note a portion of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-18013 (2010). In that ruling, we concluded the OIG must withhold certain information under sections 552.101, 552.117, and 552.134 of the Government Code. You argue, in part, the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.007 of the Government Code, however, provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Thus, pursuant to section 552.007, the OIG may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you now raise section 552.108 for the submitted information, this section is a general exception to disclosure that does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, to the extent the submitted information was previously ruled upon by this office, the OIG may not now withhold such information under section 552.108 of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2010-18013 was based have changed. Accordingly, with regard to the submitted information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the OIG must continue to rely on Open Records Letter No. 2010-18013 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

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). The OIG claims the submitted information consists of information about department inmates for purposes of section 552.134. However, we note most of the

submitted information pertains to an investigation of a department employee. Such information does not constitute "information about an inmate" for purposes of section 552.134, and may not be withheld on that basis. Accordingly, the OIG must withhold only the information we have marked under section 552.134 of the Government Code.<sup>3</sup>

The OIG raises section 552.108(b)(1) of the Government Code for the remaining information.<sup>4</sup> The OIG asserts that the remaining information reveals investigative techniques employed by the OIG during its investigations. Section 552.108(b)(1) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor 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[.]" *Id.* § 552.108(b)(1). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.,* Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution).

In this instance, you argue release of portions of the submitted information could negatively impact security and would compromise department security measures. You state the information at issue reveals information concerning investigative techniques employed by the OIG during its respective investigations. You further state release of this information would interfere with future investigations by compromising information gathering techniques. Based on your arguments and our review, we conclude release of the information we have marked would interfere with law enforcement and crime prevention. Therefore, the OIG may withhold the information we have marked under section 552.108(b)(1) of the Government Code.

We note the remaining information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.<sup>5</sup> Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.,*

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<sup>3</sup>As our ruling is dispositive, we need not address the OIG's remaining arguments against disclosure for this information.

<sup>4</sup>Although the OIG raises section 552.108(b)(2) of the Government Code, you make no arguments to support this exception. Accordingly, we find the OIG has waived its claim under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

<sup>5</sup>The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

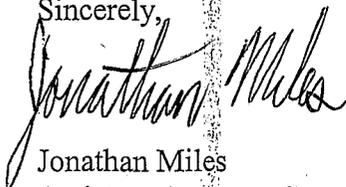
We also note some of the remaining information is confidential under section 552.117 of the Government Code. Section 552.117(a)(3) excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees 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 OIG must continue to rely on Open Records Letter No. 2010-18013 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the submitted information is not encompassed by the previous ruling, the OIG must withhold the information we have marked under sections 552.134, 552.102(a), and 552.117(a)(3) of the Government Code. To the extent the submitted information is not encompassed by the previous ruling, the OIG may withhold the information we have marked under section 552.108(b)(1) 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 407125

Enc. Submitted documents

c: Requestor  
(w/o enclosures)