



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2011

Ms. Charlotte A. Towe
Assistant General Counsel
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Mr. John C. West
General Counsel
TDCJ - Office of the Inspector General
4616 West Howard Lane, Suite 250
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OR2011-02511

Dear Ms. Towe 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# 409493 (OIG ORR 2010-00270).

The Texas Department of Criminal Justice (the "department") received a request for all records pertaining to a named inmate. The department's Office of the General Counsel (the "OGC") and its Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate responsive documents that each seeks to withhold from disclosure. The OGC states it will provide some of its responsive information to the requestor, and the OIG states it will provide some of its responsive information to the requestor with a social security number redacted pursuant to the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).¹ The OGC claims the inmate records it has

¹Open 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).

submitted are excepted from disclosure under sections 552.101 and 552.134 of the Government Code, while the OIG claims the investigation records it has submitted are excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note a portion of the OGC's submitted information was created after the department received the request for information, and a portion of the OIG's submitted information does not pertain to the named inmate specified in the request. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

The OIG seeks to withhold a portion of the information it has submitted as Exhibit B under section 552.102(a) of the Government Code. 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.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Upon review, we agree the OIG must withhold the correction officer's date of birth it has marked in Exhibit B under section 552.102(a) of the Government Code. The OIG states it will release the remaining information in Exhibit B.

The OGC claims its submitted responsive information, and the OIG claims the responsive investigation information it has submitted as Exhibit C, is excepted under section 552.134(a) of the Government Code, which 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). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part:

²Although the OIG also raises sections 552.103, 552.136, and 552.137 of the Government Code, it has not submitted arguments explaining how these exceptions apply to the OIG's submitted information. Therefore, we presume the OIG has withdrawn its claims under these exceptions. *See id.* §§ 552.301, .302.

[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 submitted responsive inmate and investigation records, we conclude section 552.134(a) is generally applicable to this information. We note, however, some of the OIG's and the OGC's submitted records pertain to use of force incidents, alleged crimes involving the named inmate, and the named inmate's death in custody. Therefore, the OIG and OGC must release basic information about the use of force incidents, alleged crimes, and inmate's death pursuant to section 552.029. Basic 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. The OIG states it has released basic information about the use of force incident, alleged crimes, and inmate's death at issue in Exhibit C. Therefore, the OIG must withhold Exhibit C pursuant to section 552.134 of the Government Code. Additionally, the OGC must release basic information about the use of force incidents, alleged crimes, and inmate's death at issue in its submitted responsive information and withhold its remaining responsive information pursuant to section 552.134 of the Government Code.³

In summary, the OIG must withhold the marked date of birth in Exhibit B under section 552.102(a) of the Government Code, and Exhibit C pursuant to section 552.134 of the Government Code. With the exception of basic information, the OGC must withhold its submitted responsive information under section 552.134 of the Government Code.

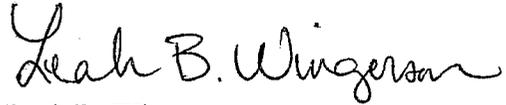
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

³As our ruling is dispositive, we need not address the OIG's and OGC's remaining arguments against disclosure.

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 409493

Enc. Submitted documents

c: Requestor
(w/o enclosures)