



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2011

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

OR2011-11186

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# 425857.

The Texas Department of Criminal Justice (the "department") received a request for records relating to a specified event that occurred during the requestor's incarceration in a Texas Department of Corrections facility. The department's Office of the General Counsel (the "OGC") and the department's Office of the Inspector General (the "OIG") submitted separate correspondence to this office.¹ You state the OIG will release some responsive information to the requestor, including the requestor's polygraph examination results. You also state the OIG will withhold social security numbers pursuant to section 552.147 of the Government Code.² You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.134 of the Government Code is applicable to information relating to current or former inmates of the department and provides, in relevant part:

¹In a letter dated June 3, 2011, the OGC informed this office that because the responsive information concerning this request was being submitted by the OIG, the OGC wished to withdraw its request.

²Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person from public release without the necessity of requesting a decision from this office under the Act.

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 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 552.029 of the Government Code provides, in part, that

[n]otwithstanding . . . 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:

...

(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). Thus, section 552.134 is explicitly made subject to section 552.029. Upon review, we agree section 552.134(a) is generally applicable to the submitted information. In this instance, however, the submitted records pertain to the alleged sexual assault of an inmate. Thus, the OIG must release basic information regarding the alleged crime involving the inmate pursuant to section 552.029 of the Government Code. Basic information includes the time and place of the incident, the 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 department must withhold the rest of the submitted information under section 552.134.

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate and 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. This office has found that 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). Although you argue the victim’s identity should be withheld on the basis of common-law privacy, the requestor in this instance is the victim of the alleged sexual assault and therefore has a special right of access to her own information that would otherwise be withheld on the basis of privacy. *See* Gov’t Code

§ 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). Consequently, the OIG may not withhold any of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information, which must be released to this requestor, the OIG must withhold the submitted information under section 552.134 of the Government Code.³

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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 425857

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because the requestor has a special right of access to the information being released, if the OIG receives another request for this information from a different requestor, the OIG must again seek a ruling from this office.