



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2012

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

OR2012-03945

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# 447986 (OIG Open Records 2011-00266).

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for all information pertaining to a specified administrative case. You state the department does not have records responsive to some of the requested information.¹ You state the department plans to release some of the requested information. You claim that the submitted 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.

Initially, you inform us that any of the submitted information released to the requestor will be redacted pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005) and section 552.147 of the Government Code. *See* Open Records Letter No. 2005-01067 (authorizing department to withhold information relating to its current or former employees under section 552.117(a)(3) without necessity of requesting attorney general decision); Gov't Code § 552.147(b) (authorizing governmental body to

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

redact a living person's social security number from public release under section 552.147 without necessity of requesting attorney general decision). We note that sections 552.117 and 552.147 protect personal privacy. Therefore, the requestor has a right of access to private information concerning himself, and that information may not be withheld from him under section 552.117 or section 552.147. *See id.* § 552.023 (person has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). As the requestor is the only current or former employee whose private information is contained in the submitted information, the department may not withhold any of the submitted information under section 552.117(a)(3) of the Government Code pursuant to Open Records Letter No. 2005-01067.

Section 552.134 of the Government Code relates to information about inmates of the department. This exception 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). In this instance, the submitted information pertains to the conduct of a former department employee. As such, this information is not "about an inmate" for purposes of section 552.134 and may not be withheld on that basis. However, upon review, we find the information we have marked pertains to an individual confined as an inmate in a facility operated by the department. We find this information is subject to section 552.134. We also find the exceptions in section 552.029 are not applicable in this instance. Therefore, the department must withhold the information we have marked under section 552.134(a) of the Government Code.²

You assert that portions of the remaining information are protected under common-law and constitutional privacy. Section 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 information made confidential by statute. *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy,

²As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

both prongs of this test must be satisfied. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. *See id.* at 683. Upon review, however, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Open Records Decision No. 455 at 4 (1987)*. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *See id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we conclude you have not explained how any of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. *See Gov't Code § 552.301(e)(1)(A)*. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

In summary, the department must withhold the information we have marked under section 552.134 of the Government Code. The department must release the remaining information.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,

³We note the information being released contains confidential information to which the requestor has a right of access. *See Gov't Code § 552.023(a)*; ORD 481. If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

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,

A handwritten signature in black ink, appearing to read 'KLC', with a long horizontal stroke extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 447986

Enc. Submitted documents

c: Requestor
(w/o enclosures)