



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2012

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

OR2012-04660

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# 449226.

The Texas Department of Criminal Justice (the "department") received a request for (1) information pertaining to employees charged with Falsifications of Records and a named individual, and (2) the closing date of a specified investigation involving the requestor. You state some of the requested information either has been or will be released. You further state the department will redact certain addresses, telephone numbers, social security numbers, and personal family information pursuant to sections 552.117 and 552.147(b) of the Government Code and the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).¹ You claim other responsive information is excepted from

¹We note Open Records Letter No. 2005-01067 (2005) 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 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). However, because the requestor has a right of access to information pertaining to her that would ordinarily be withheld on the basis of privacy, the department may not withhold the requestor's personal information from her under section 552.117. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Section 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 under the Act. *Id.* § 552.147. However, the requestor has a right to her own social security number. *See generally id.* § 552.023(b).

disclosure under sections 552.101, 552.102, 552.108, 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 inmates and former inmates of the department and provides in relevant part as follows:

(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). Section 552.134 is explicitly made subject to section 552.029, which provides in part:

Notwithstanding 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). We note the submitted information consists of an investigation of a crime involving an inmate. The department must release basic information about the crime pursuant to section 552.029(8). *See id.* For purposes of section 552.029(8), basic information includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. Thus, those types of information must be released pursuant to section 552.029(8) and may not be withheld under section 552.134.

Upon review, we agree portions of the information at issue, which we have marked, are subject to section 552.134 of the Government Code. Therefore, the department must withhold the information we have marked under section 552.134 of the Government Code.² However, we find the remaining information at issue consists of general investigative materials pertaining to the incident at issue and employees of the department, and thus does not constitute information about an inmate confined in a facility operated by the department

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

for the purposes of section 552.134. Accordingly, the remaining information, including the basic information which must be released under section 552.029, may not be withheld under section 552.134 of the Government Code.

We note some of the submitted information was acquired from a polygraph examination in which the requestor was the examinee. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This exception encompasses information other statutes make confidential. Section 1703.306 of the Occupations Code provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. The information we have marked consists of information acquired from a polygraph examination subject to section 1703.306. In this instance, the requestor is the polygraph examinee. Thus, the department has the discretion to release the polygraph information to this requestor pursuant to section 1703.306(a)(1) of the Occupations Code. *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees).

Section 552.102(a) of the Government Code 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 has 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. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). In this instance, the birth dates at issue include the requestor’s birth date. Because section 552.102(a) protects personal privacy, the requestor has a special right of access to her own birth date. *See* Gov’t Code § 552.023(a); ORD 481 at 4. However, the remaining birth dates at issue are those of other department employees. Therefore, the department must withhold this information under section 552.102(a) of the Government Code.

You assert the submitted employee sign in log is a shift roster that is excepted from disclosure pursuant to a previous determination issued by this office to the department in Open Records Letter No. 2004-6370 (2004). In that ruling, this office ruled the department may withhold shift rosters for its prison units from public disclosure for security reasons

under section 552.108(b)(1) of the Government Code. Therefore, the department may withhold the employee sign in log under section 552.108(b)(1) pursuant to the previous determination issued in Open Records Letter No. 2004-6370. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under Gov't Code § 552.301(a)).

In summary, the department must withhold the information we have marked under section 552.134 of the Government Code. The department has the discretion to release the polygraph information to this requestor pursuant to section 1703.306(a)(1) of the Occupations Code. The department must withhold the birth dates of employees, other than the requestor, under section 552.102(a) of the Government Code. The department may withhold the employee sign in log under section 552.108(b)(1) pursuant to the previous determination issued in Open Records Letter No. 2004-6370. The remaining submitted information must be released.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

³We note the information being released in this instance includes information that is confidential with respect to the general public. *See* Gov't Code § 552.023(a), ORD 481 at 4. Therefore, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 449226

Enc. Submitted documents

c: Requestor
(w/o enclosures)