



ATTORNEY GENERAL OF TEXAS
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May 17, 2012

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OR2012-07403

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# 454077.

The Texas Department of Criminal Justice (the "department") received a request for all records pertaining to the requestor and her employment with the department. The department's Office of General Counsel (the "OGC") and Office of the Inspector General (the "OIG") have submitted separate correspondence to this office, as well as separate responsive records each seeks to withhold from disclosure. The OGC states some of the requested information has been released to the requestor. The OIG further states it does not maintain some of the requested information.¹ The OIG also states it will release some of the requested information to the requestor with certain addresses, telephone numbers, social

¹In responding to a request for information under the Act, a governmental body is not required to disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

security numbers, and personal family information redacted pursuant to sections 552.117 and 552.147(b) of the Government Code, as well as the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).² The OGC claims its submitted information is excepted from disclosure under section 552.134 of the Government Code. The OIG claims its submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The OIG claims its submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code, which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The OIG states its submitted information pertains to a criminal investigation that is currently open and under investigation. Based on this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the OIG’s submitted information.

However, we note, and the OIG acknowledges, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which the OIG indicates it has released, the department may withhold the OIG’s submitted information under section 552.108(a)(1) of the Government Code.³

²Open 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 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). 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.

³As our ruling for the OIG’s information is dispositive, we need not address the OIG’s remaining arguments against disclosure for its submitted information.

Next, the OGC claims its submitted information 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). The information at issue consists of a shift briefing record. We find this record pertains to the requestor's conduct as an employee. Therefore, this record is not "about an inmate" for purposes of section 552.134 and may not be withheld in its entirety under section 552.134. The submitted record, however, includes inmate-identifying information. Thus, we agree this information is subject to section 552.134. You also assert, and we agree, section 552.029 of the Government Code does not apply to the information at issue. Therefore, the department must withhold the information we have marked in the OGC's information under section 552.134 of the Government Code.

In summary, with the exception of the basic information, the department may withhold the OIG's submitted information under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in the OGC's information under section 552.134 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, 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 454077

Enc. Submitted documents

c: Requestor
(w/o enclosures)