



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 1, 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

OR2012-08356

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# 455202 (OIG Open Records 2012-00056).

The Texas Department of Criminal Justice's Office of the Inspector General (the "department") received a request for three categories of information pertaining to a specified injury of a named department employee, the requestor's client. You state the department has released some responsive information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.102, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us Exhibit B will be released to the requestor with redactions made 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 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 his client, and that information may not be withheld from him under section 552.117 or section 552.147. *See id.* § 552.023 (person or person's authorized representative has special right of access, beyond right of general public, 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). Accordingly, the department must release the personal information concerning the requestor's client. However, the department may withhold the remaining social security numbers you have marked in Exhibit B pursuant to section 552.147(b) of the Government Code.

Section 552.108(a)(1) of the Government Code 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). You state the submitted information is related to an open administrative investigation of an alleged accidental injury to an employee. We note section 552.108 is generally not applicable to records of an internal investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to Gov't Code § 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You state that "[u]ntil this investigation is completed . . . it is possible that criminal charges could be identified against one or more subjects who may be identified and included as possible defendants in future criminal litigation." Having considered your representations, we find you have not demonstrated 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we conclude the department may not withhold any of the submitted information under section 552.108(a)(1) of the Government Code.

You also seek to withhold portions of the remaining information under section 552.134 of the Government Code, which 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 information at issue pertains to the conduct of a department employee, and, therefore, is not "about an inmate" for purposes of section 552.134. Thus, the remaining information may not be withheld in its entirety under section 552.134. The remaining records, however, include inmate-identifying information. 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.

You seek to withhold portions of 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." *Id.* § 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 consist of the requestor's client's birth date and inmates' birth dates. Because section 552.102(a) protects personal privacy, the requestor has a special right of access to his client's birth date. *See* Gov't Code § 552.023(a); ORD 481 at 4. Further, because the inmates are not department employees, their dates of birth may not be withheld under section 552.102(a) of the Government Code. Therefore, the department may not withhold any of the information in Exhibit B under section 552.102(a) of the Government Code.

In summary, other than the requestor's client's social security number, the department may withhold the social security numbers you have marked in Exhibit B pursuant to section 552.147(b) of the Government Code. The department must withhold the information we have marked under section 552.134(a) of the Government Code. The remaining information must be released.¹

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,

¹We 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.

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,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a large, stylized flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 455202

Enc. Submitted documents

c: Requestor
(w/o enclosures)