



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2012

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

OR2012-13369

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# 463192 (TDCJ ORR-2012-000113).

The Texas Department of Criminal Justice's Office of the Inspector General (the "OIG") received a request for all documents pertaining to all periods of incarceration for a named inmate. You state you will redact certain information subject to section 552.117 of the Government Code pursuant to Open Records Letter No. 2005-01067 (2005) and section 552.147(b) of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police

¹Open Records Letter No. 2005-01067 (2005) authorizes the OIG 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. *See* Gov't Code § 552.147(b).

efforts to effectuate the laws of this State.” *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You argue files HR.14.1026.99.E1 and HR.14.1296.99.E1 contain death row offender housing and job assignment lists gathered by the OIG to further the detection and investigation of crime and could be used in the planning and execution of crime, as well as facilitate an escape plan. However, upon review we find files HR.14.1026.99.E1 and HR.14.1296.99.E1 do not contain any of this information. Further, we find you have failed to demonstrate how release of any of the information in files HR.14.1026.99.E1 and HR.14.1296.99.E1 would interfere with law enforcement or crime prevention. Therefore, the OIG may not withhold any portion of files HR.14.1026.99.E1 and HR.14.1296.99.E1 under section 552.108(b)(1) of the Government Code. You further argue file IF.IS.02315.2010.IS contains information on security threat group activities inside the correctional facility and identifies offenders who are or may be members of a security threat group. You state the release of this information would compromise security measures and investigative techniques. Upon review, we find the information we have marked would interfere with law enforcement and crime prevention. Accordingly, the OIG may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate how the release of the remaining information you seek to withhold would interfere with law enforcement or crime prevention. Accordingly, the OIG may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.134 of the Government Code relates to inmates of the Texas Department of Criminal Justice (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.

(b) Subsection (a) does not apply to:

...

(2) information about an inmate sentenced to death.

Gov't Code § 552.134(a), (b)(2). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part:

[n]otwithstanding [s]ection . . . 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). Upon review, we find report numbers HR.14.1026.99.E1 and HR.14.1296.99.E1 pertain to an offender on death row. We note section 552.134 is not applicable to information about inmates on death row. Accordingly, these reports may not be withheld under section 552.134. *See id.* § 552.134(b)(2). We find report number IF.IS.02315.2010.IS contains information about offenders on death row and those that are not on death row. Accordingly, we conclude section 552.134 is applicable to the information contained in this report, to the extent the information belongs to an offender not on death row. We note, however, report number IF.IS.02315.2010.IS pertains to alleged crimes involving the named inmates. Therefore, the OIG must release basic information of the alleged crimes pursuant to section 552.029(8). Basic information includes the time and place of the incident, 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. Therefore, with the exception of basic information, the OIG must withhold the information contained in report number IF.IS.02315.2010.IS pertaining to non-death row inmates pursuant to section 552.134(a) of the Government Code.

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 section encompasses constitutional privacy, which 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. 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. *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)).

This office has applied constitutional privacy to protect certain information related to incarcerated individuals. *See* Open Records Decision Nos. 430 (1985), 428 (1985), 185 (1978). This office has held those individuals who correspond with inmates possess a “first amendment right . . . to maintain communication with [the inmate] free of the threat of public exposure,” and this right would be violated by the release of information that identifies those correspondents, because such a release would discourage correspondence. ORD 185 at 2; *see State v. Ellefson*, 224 S.E.2d 666 (S.C. 1976). The information at issue in Open Records Decision No. 185 consisted of the identities of individuals who had corresponded with inmates. In that decision, our office found “the public’s right to obtain an inmate’s correspondence list is not sufficient to overcome the first amendment right of the inmate’s correspondents to maintain communication with him free of the threat of public exposure.” ORD 185 at 2. Implicit in this holding is the fact that an individual’s association with an inmate may be intimate or embarrassing. In Open Records Decision Nos. 428 and 430, our office determined inmate visitor and mail logs that identify inmates and those who choose to visit or correspond with inmates are protected by constitutional privacy because people who correspond with inmates have a First Amendment right to do so that would be threatened if their names were released. Open Records Decision Nos. 430, 428. The rights of those individuals to anonymity was found to outweigh the public’s interest in this information. ORD 185; *see* ORD 430 (list of inmate visitors protected by constitutional privacy rights of both inmate and visitors). We note the requestor is an attorney representing the inmate whose information is at issue. Thus, she has a special right of access to information that would normally be withheld on the basis of the inmate’s privacy interests under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (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 the person and is protected from public disclosure by laws intended to protect that person’s privacy interests). Upon review, we find the remaining information does not identify anyone who corresponded with the inmate, thereby implicating their privacy interests. Therefore, the OIG may not withhold any of the remaining information at issue under section 552.101 in conjunction with constitutional privacy.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. 540 S.W.2d at 683. Upon review, we find you have failed to

demonstrate any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the OIG may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

In summary, the OIG may withhold the information we have marked under section 552.108(b)(1) of the Government Code. With the exception of basic information, the OIG must withhold the information contained in report number IF.IS.02315.2010.IS pursuant to section 552.134(a) of the Government Code, to the extent the information pertains to an offender not on death row. The remaining information must be released.²

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

Ref: ID# 463192

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the information being released contains confidential information to which the requestor has a right of access under section 552.023 of the Government Code, if the OIG receives another request for this information from a different requestor, it must again seek a ruling from this office.