



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2013

Mr. John C. West
General Counsel
Office of Inspector General
Texas Department of Criminal Justice
4616 Howard Lane, Suite 250
Austin, Texas 78728

OR2013-20002

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# 505848.

The Texas Department of Criminal Justice (the "department") received a request for four categories of information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.130, 552.134 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information

was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); see Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identities of witnesses to and victims of sexual harassment were highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

In this instance, the submitted information pertains to the investigation of an alleged sexual assault. Further, the requestor in this case knows the identity of the alleged sexual assault victim. Thus, you argue the submitted information must be withheld in its entirety to protect the privacy of the victim. In this instance, however, the requestor may be an authorized representative of the individual at issue. Therefore, we must rule conditionally. If the requestor is not an authorized representative of the individual whose information is at issue, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is an authorized representative of the individual at issue, then the requestor has a right of access to the individual's private information pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles). In that situation, we will address your remaining arguments against disclosure.

You assert the submitted information is excepted from release under section 552.134 of the Government Code, which encompasses information relating to inmates of the department and states, in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Id. § 552.134(a). However, section 552.029 of the Government Code provides:

Notwithstanding [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:

(1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate; [or]

...

(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(1), (8). Thus, the legislature explicitly made section 552.134 subject to section 552.029. Upon review, we find section 552.134 is applicable to the submitted information. However, the information at issue concerns injuries suffered by and alleged crimes involving the inmates. Thus, the department must release information concerning the nature of the inmate's injuries and basic information concerning the alleged crimes. 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, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. The department must withhold the remaining information under section 552.134 of the Government Code.¹

In summary, if the requestor is not the authorized representative of the individual whose information is at issue, then the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is the authorized representative of the individual at issue, then, the department must release information concerning the nature of the inmate's injuries and basic information concerning the alleged crime and must withhold the remaining information under section 552.134 of the Government Code.²

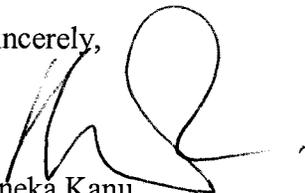
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

¹As our ruling under section 552.134 of the Government Code is dispositive, we do not address your remaining arguments against disclosure, except to note basic information may generally not be withheld under section 552.108. *See* Open Records Decision No. 597 (1991); Gov't Code § 552.108©.

²We note the information being released in this instance 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. We also note this ruling does not affect an individual's right of access to a patient's medical records from the physician who provided treatment under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 159.004-.006; *cf. Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (MPA, subtitle B of title 3 of the Occupations Code, does not provide patient general right of access to his or her medical records from governmental body responding to request for information under Public Information Act).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 505848

Enc. Submitted documents

c: Requestor
(w/o enclosures)