



August 14, 2002

Mr. James M. Frazier, III
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2002-4461

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167106.

The Texas Department of Criminal Justice (the "department") received a request for all witness statements, polygraph examinations, worksheets and attachments pertaining to Office of the Inspector General Case Number SC.15.6293.01.TO. You claim that the requested information is excepted from disclosure under sections 552.029, 552.101, 552.107, 552.108, 552.111, and 552.134 of the Government Code and Rule 192.5 of the Texas Rules of Civil Procedure.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have submitted a criminal offense report regarding the incident at issue in Case Number SC.15.6293.01.TO. You claim that this document is not responsive to the present request. However, we find that the submitted offense report consists of witness statements, worksheets, and attachments pertaining to Case Number SC.15.6293.01.TO for purposes of this request. Therefore, we find that the submitted offense report is responsive to the present request.

¹As you did not submit to this office written comments stating the reasons why sections 552.107 and 552.111 would allow the information to be withheld, we find that you have waived these exceptions. *See* Gov't Code §§ 552.301, .302. Further, as you did not submit to this office written comments stating the reasons why section 552.101 of the Government Code and Rule 192.5 of the Texas Rules of Civil Procedure would allow the information to be withheld, we assume that you are no longer asserting these exceptions to disclosure.

We will now address your claimed exceptions with respect to all of the submitted information. Section 552.134(a) of the Government Code provides:

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.

Section 552.029 of the Government Code provides:

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 Texas Department of Criminal Justice 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.

Section 552.134 is explicitly made subject to section 552.029. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure. The submitted information contains information regarding alleged criminal conduct involving an inmate. See Penal Code § 39.04. Accordingly, while the department must generally withhold the submitted information under section 552.134, it must release certain basic information regarding the alleged crime 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.

We note, however, that the department must withhold some of the listed basic information under section 552.101 of the Government Code. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common law privacy. The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify

the victim. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Accordingly, the department must withhold the name of the inmate who is the victim of the alleged crime under section 552.101 of the Government Code. The department must release all other basic information regarding the alleged crime.

Finally, you argue that the department should not be required to release basic information regarding the administrative investigation because to do so would require that the department create a new document. We note that the Public Information Act (the "Act") does not require a governmental body to create or prepare new information. Open Records Decision Nos. 572 (1990), 342 (1982). Rather, the Act requires a governmental body to release a copy of the actual requested record, with excepted information redacted, unless the requestor agrees otherwise. *See* Open Records Decision No. 606 (1992). Thus, the department need not create a new document to respond to the present request. Instead, the department must redact the information excepted under sections 552.134 and 552.101 from the submitted documents and release the remaining information.

To summarize, we conclude that, with the exception of the name of the inmate who is the victim of the alleged crime, which must be withheld under section 552.101 and common-law privacy, the department must release the basic information regarding the alleged crime. The remaining information must be withheld under section 552.134.²

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

²As we are able to make this determination, we need not address your remaining claimed exception.

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 167106

Enc: Submitted documents

c: Ms. Samantha J. Edwards
720 East 17th Street
Colorado City, Texas 79512
(w/o enclosures)