



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2004

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

OR2004-4479

Dear Mr. Frazier:

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# 202812.¹

The Texas Department of Criminal Justice (the "department") received five requests from five individuals for OIG Investigation SC.12.0073.03.BJ. Additionally, three of those individuals also requested shift rosters for varying specified time periods. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

¹On March 29, 2004, this office received a request for a ruling from you pertaining to a request from Mr. Courtney Adams for shift rosters for a specified time period. We originally assigned ID#202790 to this request for a ruling. However, because this instant letter ruling addresses a second, related request from Mr. Adams, as well as related requests from the four other requestors, we are combining ID#202790 with this ruling and addressing both of Mr. Adams' requests here.

Further, because the request to the department from Mr. Dover Kimbel Sr. for the OIG investigation is related to the four other requests for information, we are also combining ID#203018 with this ruling and addressing Mr. Kimbel's request for information here.

²You indicate that you have included representative samples of the requested shift rosters. We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that certain information contained in the submitted polygraph results has been redacted from the submitted documents. You do not assert, nor has our review of our records indicated, that you have been granted a previous determination to withhold any such information without seeking a ruling from this office. Because we can discern the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling *in this instance*. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested").

Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

This office has on numerous occasions concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that section 552.108 excepts sketch showing security measures for execution). You state that the requested shift rosters indicate the name and placement of certain officers within the prison unit as well as whether a particular post is manned on particular dates. You also contend that this information, if released, could "help inmates in their future attempts to circumvent the security of the prison unit." Having reviewed your arguments and the submitted information, we agree that the release of the shift rosters would interfere with law enforcement or crime prevention. Accordingly, the department may withhold the requested shift rosters from disclosure under section 552.108(b)(1) of the Government Code.

We next address your claim that section 552.134 is applicable to the remaining submitted information. Section 552.134(a) of the Government Code relates to inmates of the department and 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). The remaining submitted records all constitute information about inmates confined in a facility operated by the department. We find that the exceptions in section 552.029 are not applicable. Therefore, all of the remaining submitted information is excepted from disclosure under section 552.134 of the Government Code and must be withheld.³

In summary, the department may withhold the requested shift rosters from disclosure under section 552.108(b)(1). The department must withhold all remaining submitted information under section 552.134.

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 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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

³Because we are able to make a determination under section 552.134, we need not address your additional arguments against disclosure.

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,


Cary Grace
Assistant Attorney General
Open Records Division

ECG/krl

Ref: ID# 202812

Enc. Submitted documents

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Mr. Cornell Allen
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Mr. Dover Kimble Sr.
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