



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2004

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

OR2004-10153

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# 215096.

The Texas Department Of Criminal Justice (the "department") received a request for twelve categories of information relating to a named employee. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.122, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the requested information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. We have marked the federal tax return information contained in the submitted information that must be withheld. Open Records Decision No. 600 (1992).

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<sup>1</sup>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.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that two of the reports pertain to cases that concluded in results other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable. We have marked the documents that may be withheld under section 552.108.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007. Because section 552.108 is dispositive, we do not address the department's other assertions for this information.<sup>2</sup>

Section 552.117(a)(3) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, social security numbers, and family member information of employees of the department, regardless of whether the employees complied with section 552.1175. Thus, you must withhold the home addresses, home telephone numbers, social security numbers, and family member information of current or former department employees contained in the submitted information under section 552.117(a)(3). We have marked the information that must be withheld under this exception.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Additionally, when answers to test questions might reveal the substance of the questions themselves, the answers

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<sup>2</sup>Contrary to the department's assertion, we note that section 552.134 of the Government Code does not apply to these reports. One report is not about a department inmate. The other report concerns an inmate on death row. See Gov't Code § 552.134(b)(2) (section 552.134 does not apply to an inmate sentenced to death).

may be withheld from disclosure under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994). Having reviewed the submitted questions, we agree that some of the questions are “test items” as contemplated by section 552.122(b). Therefore, you may withhold the questions and answers we have marked under section 552.122(b).

Section 552.130 of the Government Code excepts from public disclosure information that relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov’t Code § 552.130(a). We have marked the information that must be withheld under section 552.130.

Section 552.134(a) of the Government Code relates to inmates of the department. This section 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). Some of the submitted information constitutes information about an inmate confined in a facility operated by the department. We have marked the information that must be withheld under section 552.134 of the Government Code. Please note, however, that the exception in section 552.029 is applicable to some of the information excepted under section 552.134.

Section 552.029 states:

Notwithstanding . . . Section 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.

Gov't Code § 552.029(8). 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. Some of the requested documents pertain to incidents involving the use of force against department inmates. Accordingly, while the department must generally withhold the submitted information under section 552.134, it must release basic information regarding these incidents 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. Because section 552.134 is dispositive, we do not address the department's argument regarding criminal history record information.

In summary, the department must withhold federal tax return information made confidential under section 552.101 of the Government Code and section 6103(a) of title 26 of the United States Code. The department must also withhold the home addresses, home telephone numbers, social security numbers, and family member information of current and former department employees under section 552.117(a)(3) of the Government Code. We have marked Texas driver's license information that must be withheld under section 552.130 of the Government Code. Information that relates to an inmate of the department must be withheld under section 552.134 of the Government Code. However, basic information regarding the use of force must be released under section 552.029(8) of the Government Code. We have marked the documents that may, with the exception of basic offense report information, be withheld under section 552.108(a)(2) of the Government Code. Finally, we have marked those test questions and answers that may be withheld under section 552.122 of the Government Code. The department must release the remaining information.

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).

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,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/sdk

Ref: ID# 215096

Enc. Submitted documents

c: Ms. Yolanda M. Torres  
ACLU  
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(w/o enclosures)