



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2005

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

OR2005-04521

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 224730.

The Texas Department of Criminal Justice (the "department") received a request for all information concerning the requestor, a department employee. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.134 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Initially, we note that submitted information includes documents that appear to have been produced in response to grand jury subpoenas. This office has concluded that grand juries are not governmental bodies subject to chapter 552 of the Government Code, so records

¹We note that although the department, in a letter dated March 28, 2005, withdraws its previously asserted exceptions under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code, the department's Office of the Inspector General ("OIG") continues to assert section 552.108 of the Government Code. Because the OIG has not informed us of its wish to withdraw that exception, we will address its applicability.

²The OIG indicates that it is releasing some of the requested information to the requestor, with the exception of the addresses, telephone numbers, social security numbers, and family member information of department employees which are excepted under section 552.117(a)(3) and the previous determination set forth in Open Records Letter No. 2005-01067 (2005).

within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* Thus, to the extent that any of the submitted documents held by the department are in the constructive possession of the grand jury, they are not subject to the Act.

Section 552.134 of the Government Code relates to information about inmates of the department. Section 552.134 provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice 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.

Some of the submitted documents contain information about inmates confined in a facility operated by the department. Therefore, you must withhold the information we have marked under section 552.134(a) of the Government Code.

We now address your assertions under section 552.108 of the Government Code for the remaining submitted information. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The OIG states that the submitted documents relate to “two open investigations into allegations of numerous alleged [department] rule violations.” Section 552.108 is not applicable to information that relates to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution). You do not inform us that the administrative investigations resulted in any criminal investigations or charges. Thus, we conclude that you have not demonstrated that the administrative investigation documents are excepted from disclosure under section 552.108.

Some of the remaining submitted information is excepted from disclosure under section 552.117(a)(3) of the Government Code.³ Section 552.117(a)(3) excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(3). Therefore, pursuant to section 552.117(a)(3), the department must withhold the information we have marked.⁴

In summary, to the extent any of the submitted documents are in the constructive possession of the grand jury, they are not subject to the Act. The department must withhold the information we have marked under sections 552.117(a)(3) and 552.134 of the Government Code. The remaining submitted information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

³The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴ We note that the information being released contains the requestor's address, phone number, and social security number which are excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, the requestor has a special right of access to this information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). If the department receives another request for this information from a person who would not have a special right of access to this information, the department should resubmit this same information and request another decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

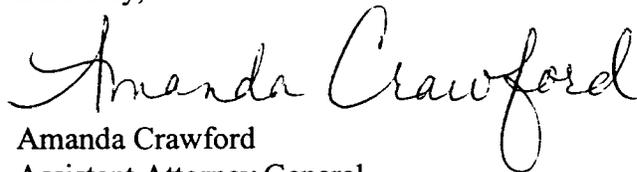
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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); *Tex. 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# 224730

Enc. Submitted documents

c: Ms. Laurie Pinson
920 Campbell Street
Palestine, Texas 75801
(w/o enclosures)

Mr. John C West
Office of the Inspector General
Texas Department of Criminal Justice
P.O. Box 13084
Austin Tx 78711
(w/o enclosures)