



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

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Mr. James A Frazier III
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Texas Department of Criminal Justice
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Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
P. O. Box 13084
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OR2005-11094

Dear Mr. Frazier and 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# 237792.

The Texas Department of Criminal Justice (the "department") received a request for (1) the payment to Corrections Corporation of America for each prisoner housed in its Mineral Wells Pre-Parole Transfer Facility, (2) all communications between the department and CCA concerning the August 27th riot at the Mineral Wells facility, along with any reports or findings, (3) the number of inmates transferred back to the department from Mineral Wells as a result of the riot, and (4) any final or preliminary investigative reports concerning the riot. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.134, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

¹We note that the department's Office of the Inspector General and Office of the General Counsel submitted separate briefs and responsive information in response to this request.

Initially, we note that the department has not submitted information regarding the payment to Corrections Corporation of America for each prisoner housed in its Mineral Wells Pre-Parole Transfer Facility for our review. As you have not submitted this requested information for our review, we assume you have released it to the extent that it existed at the time this request was received. If you have not released any such records, you must release them to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we note that section 552.022 of the Government Code makes certain information expressly public and, therefore, not subject to discretionary exceptions to disclosure. Section 552.022 states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov't Code § 552.022(a)(1) (emphasis added). Included in the information submitted by the Office of the General Counsel is a completed report. Therefore, as prescribed by section 552.022, such information must be released to the requestor unless it is confidential under other law. Section 552.134 of the Government Code is considered "other law" that makes information confidential. Therefore, we will address your claim under section 552.134 of the Government Code.

Section 552.134 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). Section 552.134 is explicitly made subject to section 552.029, which provides in relevant part the following:

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). The report at issue is a completed investigation of the August 27th riot at the Mineral Wells facility, and contains administrative findings and recommendations regarding security at the facility. The department argues that the entire report must be withheld under section 552.134. However, upon review, we find that the only information in the report regarding inmates at the facility are the names of two inmates who were seriously injured during the riot, along with a brief description of their injuries. The department does not explain how the remainder of the report is information subject to section 552.134. Further, as basic information under section 552.029(8) includes the names of inmates in an incident involving the use of force and a brief description of any injuries sustained, the entire document is subject to release. *See* Gov't Code § 552.029(8). As such the department may not withhold the report, which we have marked, under section 552.134 and, instead, must release it to the requestor.

The remainder of the information submitted by the Office of the General Counsel constitutes information about an inmate for purposes of section 552.134. However, the records concern an incident involving the use of force. Thus, the department must release basic information concerning the use of force. *Id.* 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. The remaining information submitted by the Office of the General Counsel must be withheld pursuant to section 552.134.

The department also claims that all of the information submitted by the Office of the Inspector General ("OIG") is excepted from disclosure under section 552.108 of the Government Code. 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

explains that it is conducting a criminal investigation into the riot. The OIG states that its investigation is ongoing and that the release of its information will interfere with the investigation. Based on these representations and our review, we find that the release of the OIG's information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases). Accordingly, we agree that section 552.108(a)(1) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. *See Open Records Decision No. 127* (1976) (summarizing types of information considered to be basic information). Since you state that the OIG has released basic information, we conclude that the department may withhold the remaining OIG information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007. As our ruling on this issue is dispositive, we need not address your remaining arguments.

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 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); *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 Office of the Attorney General 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. 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 237792

Enc. Submitted documents

c: David May, Editor
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(w/o enclosures)