



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 13, 2006

Mr. John C. West
General Counsel
Office of the Inspector General
Texas Department of Criminal Justice
P. O. Box 13084
Austin, Texas 78711-2548

OR2006-14654

Dear 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# 266729.

The Texas Department of Criminal Justice's Office of the Inspector General (the "OIG") received a request for a copy of a specified investigation file involving the requestor. You state that the OIG will release some of the requested information, with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ You also state that the OIG is withholding social security numbers under section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹Open Records Letter No. 2005-01067 serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the Texas Department of Criminal Justice (the "department"), regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

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 552.029 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.

Gov't Code § 552.029(8). A portion of the submitted information concerns inmates who were confined in a facility operated by the department. However, the information at issue involves an investigation into an alleged crime involving an inmate and a correctional officer. Under section 552.029, basic information regarding an alleged crime involving an inmate is subject to required disclosure. 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. Accordingly, with the exception of basic information, the OIG must withhold the information we have marked involving an inmate under section 552.134 of the Government Code. We note, however, that the remaining submitted information pertains solely to correctional officers, and does not reference department inmates. Accordingly, we find that no portion of the remaining submitted information may be withheld under section 552.134.

The OIG additionally raises section 552.108(a)(1) of the Government Code, which 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.” Gov't Code § 552.108(a)(1). 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), .301(e)(1)(a); *see also Ex parte*

Pruitt, 551 S.W.2d 706 (Tex. 1977). You state that “this file was closed with no further action taken . . . [n]evertheless, releasing information about this case that is more than basic information has the potential to reveal investigative techniques, compromise other investigations of a similar nature, and lastly, disseminate information that could not be confirmed or refuted in a court of law.” After reviewing your arguments and the submitted information, we find that you have failed to demonstrate the applicability of section 552.108(a)(1) to the remaining submitted information. Accordingly, no portion of the remaining information may be withheld on this basis.

The OIG also appears to raise section 552.108(b)(1), which excepts from required public disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor 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[.]” This office has concluded that section 552.108(b)(1) protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department’s use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment).

You state that the release of a portion of the submitted information “could negatively impact Unit security should it fall into the wrong hands.” You contend that the release of this information “would afford individuals an undue and unwarranted advantage in planning, facilitating or aiding and/or abetting future escape plans and/or attempts.” After review of your arguments and the submitted information, we agree that section 552.108(b)(1) applies to a portion of the remaining information. Thus, this information, which we have marked, may be withheld under section 552.108(b)(1).

We note that a portion of the remaining submitted information is confidential pursuant to section 552.117 of the Government Code.³ Section 552.117(a)(3) excepts from public 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 or the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175. Thus, the OIG must withhold the information we have marked pursuant to section 552.117(a)(3).

In summary, with the exception of basic information, the OIG must withhold the information we have marked involving an inmate under section 552.134 of the Government Code. The

³Unlike other exceptions to disclosure, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See Gov’t Code §§ 552.007, .352*; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

OIG must also withhold the information we have marked pursuant to section 552.117(a)(3) of the Government Code. The OIG may withhold the information marked pursuant to section 552.108(b)(1). The remaining submitted information must be released to the requestor.⁴

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).

⁴We note that some of the information being released is confidential and not subject to release to the general public. However, as you acknowledge, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the OIG receives another request for this information from an individual other than this requestor, the OIG should again seek our decision.

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/eb

Ref: ID# 266729

Enc. Submitted documents

c: Ms. Rayshuna Miller
584 Rosenwall Road
Huntsville, Texas 77320
(w/o enclosures)