ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2006

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

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

OR2006-00610

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# 240317.

The Texas Department of Criminal Justice (the "department") received a request for twelve categories of information related to personnel at the Houston III Parole Office. The department and the Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate documents that each seeks to withhold from disclosure. The OIG indicates that it will release some of the requested information.[1] The OIG claims that the remaining information it has submitted is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. The department claims that the information it has

[1]The OIG states that it will redact social security numbers from the released information pursuant to section 552.147 of the Government Code. We note that section 552.147(b)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.

submitted is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.[2]

Initially, we note that the information submitted by the department and the OIG includes the personal information of department employees. In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold the personal information of a current or former employee of the department under section 552.117(a)(3) of the Government Code without the necessity of again requesting an attorney general decision with regard to the applicability of this exception. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). Thus, the department and the OIG must withhold the personal information of current or former employees of the department in accordance with Open Records Letter No. 2005-01067.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by other statutes. Section 508.313 of the Government Code provides in part:

> (a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:
>
> > (1) an inmate of the institutional division [of the department] subject to release on parole, release to mandatory supervision, or executive clemency;
> >
> > (2) a releasee; or
> >
> > (3) a person directly identified in any proposed plan of release for an inmate.

Gov't Code § 508.313(a); *see also id.* § 508.001(9) ("releasee" means person released on parole or to mandatory supervision). The department asserts that the information it has

---

[2]We note that some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2004-10468 (2004). However, the facts and circumstances on which that prior ruling was based appear to have changed since its issuance, and the instant request encompasses information that was created since the prior request was received. As such, we will address the claimed exceptions against disclosure of the submitted information at issue. *See* Open Records Decision No. 673 (2001) (describing the four criteria for a "previous determination").

submitted is maintained by the department and relates to persons released on parole or to mandatory supervision. Based on the department's representations and our review of the information at issue, we agree that some of this information, which we have marked, relates to releasees and is therefore confidential under section 508.313(a)(2). Furthermore, we find that none of the release provisions of section 508.313 apply in this instance. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with section 508.313 of the Government Code. We find, however, that the remaining information at issue concerns only department employees and their job performance. Accordingly, we find that none of the remaining information at issue is confidential under section 508.313 and may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which governs information obtained in the course of conducting a polygraph examination and provides that "a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination" except to certain categories of people. Occ. Code § 1703.306(a). The requestor does not fall within any of the enumerated categories; therefore, the OIG must withhold the polygraph information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code encompasses the doctrine of common law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court applied the common law right to privacy addressed in *Industrial Foundation* to an investigation of alleged sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *See* 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* The court further held, however, that "the public does not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

When there is an adequate summary of an investigation, the summary and any statements of the person under investigation must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. We note that, because supervisors are not witnesses for purposes of *Ellen*, supervisors' identities may not generally be withheld under section 552.101 in conjunction with common law privacy and the holding in *Ellen*.

A portion of the information submitted by the department relates to sexual harassment investigations. In this instance, the information at issue contains adequate summaries of the sexual harassment investigations at issue. Therefore, we conclude that, under *Ellen*, the department must release the marked summaries and the statements of the accused. However, prior to releasing these documents, in accordance with the holding in *Ellen*, the department must redact the identifying information of victims and witnesses. In the cases that involve cross complaints, we find that the identities of each of the parties in these cases must be withheld. We have marked the information the department must withhold under section 552.101 in conjunction with common law privacy and the holding in *Ellen*.

Additionally, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common law privacy. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Therefore, the department and the OIG must withhold the information we have marked under section 552.101 in conjunction with common law privacy.

The OIG claims that some of its submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) 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. The OIG states that the submitted documents related to case number 04-02198 pertain to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Based on the OIG's representations and our review of the information at issue, we agree that section 552.108(a)(2) applies 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 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). Basic information under section 552.108(c) includes the

identity of the complainant and a detailed description of the offense. *See id.* at 3-4. We note, however, that the case at issue relates to allegations of sexual harassment. As noted earlier, the identity of an alleged victim of sexual harassment is excepted from public disclosure under section 552.101 in conjunction with common law privacy and the holding in *Ellen*. *See* Gov't Code § 552.101; 840 S.W.2d 519. Thus, the OIG must withhold the identities of the complainants in case number 04-02198 under section 552.101 in conjunction with common law privacy and the holding in *Ellen*. All other basic information must be released. The OIG may withhold the remaining submitted information related to case number 04-02198 pursuant to section 552.108(a)(2).[3] We note that the OIG has the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

The department claims that its remaining information is excepted from disclosure under section 552.134 of the Government Code, which 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). Upon review of the information at issue, we find that it concerns only department employees and does not constitute information about an inmate for purposes of section 552.134. Accordingly, none of the remaining information submitted by the department may be withheld under section 552.134.

We note that the information submitted by the OIG contains a personal e-mail address. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).[4] *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the relevant member of the public has affirmatively consented to the release of the e-mail address at issue. Therefore, the OIG must withhold the e-mail address we have marked under section 552.137.

---

[3]As our ruling is dispositive, we need not address the OIG's remaining arguments against disclosure.

[4]This office will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the department and the OIG must withhold the personal information of current or former employees of the department in accordance with Open Records Letter No. 2005-01067. The department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. The OIG must withhold the marked polygraph information pursuant to section 552.101 of the Government Code in conjunction with 1703.306 of the Occupations Code. Except for the marked identifying information of victims and witnesses, the department must release the marked summaries and statements of investigated individuals; however, the remaining information related to the sexual harassment investigations must be withheld pursuant to section 552.101 of the Government Code in conjunction with common law privacy and the holding in *Ellen*. The marked information must be withheld by the department and the OIG pursuant to section 552.101 of the Government Code in conjunction with common law privacy. The OIG may withhold the documents related to case number 04-02198 pursuant to section 552.108(a)(2) of the Government Code, although basic information, except for the identities of the complainants, must be released. The e-mail address we have marked must be withheld by the OIG pursuant to section 552.137 of the Government Code. The remaining information must be released.[5]

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

---

[5]Some of the department's documents marked for release contain or consist of confidential information that is not subject to release to the general public. *See* Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or the requestor's authorized representative, the department should again seek our decision.

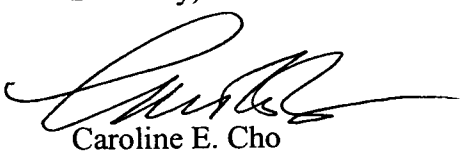
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 240317

Enc. Submitted documents

c: Ms. Lynn Klahsen
7003 Desert Bluff Lane
Richmond, Texas 77469
(w/o enclosures)