



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2006

Mr. John C. West
OIG General Counsel
Texas Department of Criminal Justice
P.O. Box 13084
Austin, Texas 78711

OR2006-03256

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# 245237.

The Office of the Inspector General of the Texas Department of Criminal Justice (the "OIG") received a request for 1) a summary listing of investigations performed by the Texas Department of Criminal Justice (the "department"); 2) a copy of all reports provided to the Texas Board of Criminal Justice; 3) copies of all judicial complaints in your possession filed by inmates and their families; 4) copies of all documents in your possession in which inmates claim they have been denied appropriate medical care or judicial access; 5) copies of all reports provided to the Texas Legislature, its members, and its committees; and 6) copies of all other reports, except specific incident reports, and final audits completed by the department. You state that the requestor subsequently clarified his request to exclude confidential communications provided to legislators. You state that you will provide the requestor with portions of the requested information upon payment. You further state that you have no information responsive to two categories of the request. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative

samples of information.¹ We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address your claim that portions of the request are burdensome. A governmental body must make a good-faith effort to relate a request to information within its possession or control. Open Records Decision No. 561 at 8 (1990); Open Records Decision No. 561. If the information requested is not clear, or if a large amount of information is requested, a governmental body may communicate with the requestor for the purpose of clarifying or narrowing the request. *See* Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999). But a governmental body may not refuse to comply with a request on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668,687 (Tex. 1976) (“It is our opinion that the [predecessor to the] Act does not allow either the custodian of records or a court to consider the cost or method of supplying requested information in determining whether such information should be disclosed.”); Open Records Decision No. 49 (1988). We therefore find that the OIG may not refuse to comply with this request on the basis that doing so would be burdensome.

You claim that the information responsive to category four of the request is excepted under section 552.134 of the Government Code. Section 552.134 of the Government Code 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 your arguments and the submitted representative sample of information, we conclude that section 552.134 is applicable to the documents at issue as information about inmates of the department. Furthermore, after reviewing the submitted information, we conclude that none of this information constitutes information subject to release under section 552.029 of the Government Code. Therefore, this information, which we have marked, must be withheld in its entirety under section 552.134 of the Government Code.

Section 552.108(a) of the Government Code 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,

¹We 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.

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 portions of the information responsive to category two of the request relate to pending criminal investigations. Thus, based upon your representations and our review, we determine that release of this information, which you have marked, would interfere with the detection, investigation, or prosecution of crime, and we therefore agree that section 552.108(a)(1) is applicable to this information. *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).

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold this marked information pursuant to section 552.108(a)(1).

In summary, the OIG must withhold the information responsive to category four of the request, which we have marked, under section 552.134 of the Government Code. With the exception of basic information, the OIG may withhold the information you have marked under section 552.108 of the Government Code.²

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).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure, except to note that basic information is generally not excepted under section 552.103. *See* Open Records Decision No. 597 (1991).

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,



Anne Prentice
Assistant Attorney General
Open Records Division

AP/sdk

Ref: ID# 245237

Enc. Submitted documents

c: Mr. Randall Chapman
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(w/o enclosures)