



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2006

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

OR2006-08052

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# 255394.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified investigation. You state that the department will release basic information but 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.

Initially, we note that you have submitted some information that was created after the request was received. This information, which we have marked, is thus not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release that information in response to the request.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). We note that this exception is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution).

In this instance, you explain that the submitted information pertains to an ongoing administrative investigation. Since this investigation is not criminal in nature, we are unable to conclude that section 552.108(a)(1) of the Government Code is applicable, and none of the submitted information may be withheld on that basis.

Next, we address your arguments under section 552.134 of the Government Code. Section 552.134 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). In this instance, the submitted information pertains to an investigation into possible violations of department policy by two named employees. The information includes the incident report, administrative report, interview notes, written statements, interoffice communications, and investigative notes. The department argues that the submitted information must be withheld under section 552.134. However, upon review, we find that the only information in the submitted records regarding inmates are the names and social security numbers of the inmates who were involved in the incident at issue in the investigation and an inmate's written statement. Accordingly, the department must withhold the inmates' names and social security numbers, as well as the written statement, all of which we have marked, under section 552.134. However, as none of the remaining information pertains to inmates, we find that it may not be withheld under section 552.134. *See id.*

We note, however, that the remaining documents contain information which may be protected under section 552.117 of the Government Code. Section 552.117(a)(3)¹ excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of the department. *See id.* § 552.117(a)(3). In this instance, the submitted information includes the home addresses, personal phone numbers, and social security numbers of two department employees, one of which is the requestor. The requestor has a right of access to her own home address, personal phone number, and social security number and this information must be released to her. *Id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles). However, the department must withhold the other employee's home address, personal phone number, and social security number, all of which we have marked, under section 552.117(a)(3).

In summary, the department must withhold the information we have marked under section 552.134 of the Government Code. The department must also withhold the information we have marked under section 552.117 of the Government Code. The remaining responsive information must be released to the requestor.

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

¹Open Records Letter No. 2005-01067 (2005) serves as a previous determination for the department that 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, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/dh

Ref: ID# 255394

Enc. Submitted documents

c: Ms. Donna Watts
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(w/o enclosures)