



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 5, 2008

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OR2008-01679

Dear Mr. West & Mr. Frazier:

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# 301393.

The Texas Department of Criminal Justice (the "department") received a request for information related to a specified correctional facility. The Office of the General Counsel (the "OGC") 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 states that it will provide some of the requested information to the requestor. The OIG states that it is withholding information subject to section 552.117 pursuant to the previous determination it received in Open Records Letter No. 2005-01067 (2005).¹ The OIG also

¹Open Records Letter No. 2005-01067 (2005) 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 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.

states that it is withholding social security numbers under section 552.147 of the Government Code.² The OGC claims that the responsive information it has submitted is subject to section 552.101 of the Government Code. The OIG claims that the responsive information it has submitted is excepted from disclosure under sections 552.101, 552.108, and 552.134. We have considered the exceptions claimed and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of income, payments, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return . . . or the determination of the existence, or possible existence, of liability . . . for any tax, . . . penalty, . . . or offense[.]" See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). The OGC must withhold the W-4 form it has marked pursuant to federal law.

Section 552.101 also encompasses information protected by other statutes. Section 508.313 of the Government Code provides in relevant 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 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.

²Section 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.

...

(c) The [department], on request or in the normal course of official business, shall provide information that is confidential and privileged under Subsection

(a) to:

- (1) the governor;
- (2) a member of the [B]oard [of Pardons and Paroles] or a parole commissioner;
- (3) the Criminal Justice Policy Council in performing duties of the council under Section 413.017 [of the Government Code]; or
- (4) an eligible entity requesting information for a law enforcement, prosecutorial, correctional, clemency, or treatment purpose.

...

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029 [of the Government Code].

Gov't Code § 508.313(a), (c), (f). A "releasee" is a person released on parole or to mandatory supervision. *Id.* § 508.001(9).

The OGC asserts that the remaining information it has submitted relates to persons who were released on parole. The OIG asserts that the information it has submitted pertains to "subjects who at the time of the alleged offenses were currently parolees from the [department]." After reviewing both the OGC's and OIG's arguments, we agree that the remaining information the OGC has submitted, and some of the information the OIG has submitted, are confidential pursuant to section 508.313. The requestor is not an entity authorized to obtain the information at issue under section 508.313(c). Accordingly, the OGC must generally withhold the remaining information it has submitted and the OIG must generally withhold some of the information it has submitted under section 552.101 in conjunction with section 508.313 of the Government Code.

We now address the OIG's arguments for the remaining information it has submitted that is not subject to section 508.313. Section 552.134 of the Government Code relates to inmates of the department. This exception 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). The information at issue concerns inmates confined in a facility operated by the department. Thus, we agree that section 552.134 is applicable to the remaining information the OIG has submitted, and it must be generally withheld under section 552.134.

We note, however, that sections 508.313 and 552.134 are explicitly made subject to section 552.029 of the Government Code. See Gov't Code §§ 508.313(f), 552.134. Section 552.029 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 [department] 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.

Id. § 552.029(8). Pursuant to section 552.029(8), 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 that must be released pursuant to section 552.029(8), you must withhold the remaining information under sections 508.313 and 552.134.

In summary, the OGC must withhold the W-4 form it has marked under section 552.101 of the Government Code and pursuant to federal law. With the exception of basic information, the department must withhold the remaining information it has submitted under sections 508.313 and 552.134.³

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

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

governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/jh

Ref: ID# 301393

Enc. Submitted documents

c: Mr. David Steinhart
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(w/o enclosures)