



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

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OR2008-14087

Dear Mr. West and Mr. DeFriend:

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# 324453.

The Texas Department of Criminal Justice (the "department") received a request for ten categories of information pertaining to the department's Mineral Wells Unit. The department's Office of the General Counsel (the "OGC") and its office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate documents, that each seeks to withhold from disclosure. The OGC claims that portions of the information it has submitted are excepted from disclosure under sections 552.101, 552.108, 552.116, 552.130, 552.134, and 552.136 of the Government Code.<sup>1</sup> The OIG states that it will release some of its requested information to the requestor with redactions pursuant to the previous

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<sup>1</sup>We note that OGC withdrew its remaining assertions under the Act in its letter dated August 18, 2008.

determination issued by this office in Open Records Letter No. 2005-01067 (2005).<sup>2</sup> The OIG also states that it is withholding social security numbers under section 552.147(b) of the Government Code.<sup>3</sup> The OIG claims that the information it has submitted is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.134 of the Government Code. We have considered the exceptions claimed and reviewed the submitted information, a portion of which is a representative sample.<sup>4</sup>

We first address OGC and OIG's arguments under section 552.134 of the Government Code, as this is the most encompassing exception to disclosure raised. Section 552.134 encompasses information relating to inmates of the department and states that

[e]xcept as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] 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, however, that

[n]otwithstanding . . . Section 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.

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<sup>2</sup>Open 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 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.

<sup>3</sup>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.

<sup>4</sup>We 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.

*Id.* § 552.029(8). Thus, the legislature explicitly made section 552.134 subject to section 552.029. OGC has marked those portions of its submitted information it asserts are subject to section 552.134, while OIG claims section 552.134 for all of its submitted investigation files. We find that section 552.134 is generally applicable to most of the information marked by OGC and all of OIG's submitted information. OGC has failed to demonstrate, however, how some grievance compliance information, which we have marked, relates to inmates of the department. This marked information may not be withheld under section 552.134. We also note that some of the investigation reports submitted by both OGC and OIG relate to use of force incidents and crimes involving inmates. Basic information about these incidents is subject to disclosure under section 552.029(8).

Although not excepted from disclosure under section 552.134, some of the basic information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common law privacy.<sup>5</sup> Information that tends to identify a victim of sexual assault is protected under common law privacy. *See* Open Records Decision No. 339 (1982); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Thus, the OIG must withhold the identifying information of an inmate who is an alleged victim of sexual assault pursuant to section 552.101 of the Government Code in conjunction with common law privacy. The remaining basic information must be released.

We now turn to OGC's arguments regarding its remaining information at issue. Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (Gov't Code § 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection

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<sup>5</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the common law right of privacy. Gov't Code § 552.101.

of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

In this instance, OGC argues that release of the information it marked under section 552.108 would interfere with law enforcement by revealing operational procedures and security measures used at the Mineral Wells Unit. OGC explains that the documents it marked under section 552.108 constitute "Compliance Reviews" recently conducted at this facility. OGC explains in detail how release of the numerous items it has identified would reveal gaps or non-compliance with official department procedures. It further argues that release of this information as a whole would allow offenders to undermine or subvert its security measures. Based on these representations and our review, we find that OGC may withhold most of the information it marked under section 552.108(b)(1).<sup>6</sup> However, we have marked some information pertaining to the certification of a wastewater collection system operator. We find that OGC failed to demonstrate how release of this marked information would interfere with law enforcement, and it may not be withheld under section 552.108(b)(1). *See* ORD No. 531.

OGC has marked some information it asserts is subject to section 552.116 of the Government Code. Section 552.116 provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or

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<sup>6</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of information subject to section 552.108(b)(1).

other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. OGC states that a portion of its remaining submitted information consists of audit working papers pertaining to an audit conducted to see if the Mineral Wells Unit was operating in accordance with operational standards. Beyond a general statement that the information pertains to an audit of this facility, OGC provides no arguments demonstrating that this audit was authorized or required by a statute of this state or the United States. Thus, we conclude that OGC has failed to establish that section 552.116 is applicable to any portion of the remaining information, and none may be withheld on this basis.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). Based upon our review of the remaining documents at issue, we have marked bank account numbers that must be withheld under section 552.136. However, OGC has not explained how any of the remaining information it marked constitutes an access device number subject to section 552.136. Thus, only the information we marked must be withheld under section 552.136.

In summary, except for the information we have marked for release and basic information from use of force incidents and crimes involving inmates, OGC and OIG must withhold the information marked under section 552.134 of the Government Code. However, in releasing basic information, OIG must withhold any information identifying a sexual assault victim pursuant to section 552.101 of the Government Code in conjunction with common law privacy. Except for the information we marked for release, OGC may withhold the information it marked under section 552.108(b)(1) of the Government Code, and OGC must withhold the bank account numbers we marked under section 552.136 of the Government Code. The remaining 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 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). If the governmental body does not file suit over 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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/jh

Ref: ID# 324453

Enc. Submitted documents

c: Mr. Nick Hudson  
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(w/o enclosures)