



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 20, 2009

Mr. John C. West  
General Counsel  
Office of the Inspector General  
Texas Department of Criminal Justice  
4616 Howard Lane, Suite 250  
Austin, Texas 78728

OR2009-01928A

Dear Mr. West:

This office issued Open Records Letter No. 2009-01928 (2009) on January 21, 2009. We have examined this ruling and determined we made an error. Where this office determines an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on January 21, 2009. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

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# 342833.

The Texas Department of Criminal Justice's (the "department") Office of the Inspector General (the "OIG") received a request for a specified investigation. You state you have released some of the information. You further state you are withholding information subject to section 552.117 pursuant to the previous determination issued to the department in Open

Records Letter No. 2005-01067 (2005).<sup>1</sup> You also state you are withholding social security numbers under section 552.147 of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim much of the submitted information is excepted from disclosure under section 552.134 of the Government Code. Section 552.134(a) relates to inmates of the department and provides:

Except 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). The submitted information concerns an investigation related to the alleged mistreatment of inmates confined in a facility operated by or under contract with the department. You state the submitted information, including the cook's worksheets, is information about inmates for purposes of section 552.134. Further, none of the information at issue is subject to release under section 552.029 of the Government Code. Upon review, we agree portions of the submitted information are subject to section 552.134. Accordingly, the department must withhold the information we have marked pursuant to section 552.134 of the Government Code.<sup>3</sup> The remaining information, however, consists of internal memoranda to department employees and the investigation into these employees. Thus, you have failed to demonstrate how this information is about an inmate. Accordingly, no portion of the remaining information may be withheld under section 552.134.

Next, you claim section 552.101 of the Government Code for the remaining information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception

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<sup>1</sup>Open Records Letter No. 2005-01067 authorizes the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department under section 552.117(a)(3) of the Government Code without the necessity of requesting an attorney general decision with regard to the applicability of that exception. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

<sup>2</sup>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.

<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

encompasses information made confidential by other statutes. Section 290dd-2 of title 42 of the United States Code provides in part:

(a) Requirement Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

42 U.S.C. § 290dd-2(a); *see* 42 C.F.R. § 2.1 (records of identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with performance of drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of United States are generally confidential). We understand the department operates a federally funded substance abuse treatment program. As noted above, the remaining information consists of internal memoranda and investigation documents. You have failed to demonstrate how this information consists of "records of the identity, diagnosis, prognosis or treatment of any patient" for the purposes of section 290dd-2 of title 42 of the United States Code. Therefore, no portion of the remaining information may be withheld on this basis.

You assert the photographs of the building and cell areas are excepted from disclosure under section 552.108(b)(1) of the Government Code, which 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 pet.). 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 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 of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 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).

You state release of the submitted photographs of inside the prison unit would interfere with ongoing law enforcement activities. You further state that this information "could be used by others in the planning and execution of a crime" and that knowledge of this information could compromise prison security by being "used to facilitate an escape plan." Based on your representations and our review, we find the release of the photographs, which we have marked, would interfere with law enforcement. Accordingly, the department may withhold the marked photographs under section 552.108(b)(1) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.134. The department may withhold the marked photographs under section 552.108(b)(1). The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/cc

Ref: ID# 342833

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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## INTER-AGENCY

**TO:**

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**FOR DELIVERY TO AUSTIN BASED STATE AGENCIES ONLY**

BOX 1 OF 1