



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2009

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

OR2009-06002

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# 341857.

The Texas Department of Criminal Justice's (the "department") Office of the Inspector General (the "OIG") received a request for the requestor's personnel file and any information pertaining to an investigation of the requestor, who is a former department employee. You state that the OIG will release some information to the requestor. You also state you will redact portions of the information pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005)¹ and section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under sections

¹Open 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 Texas Department of Criminal Justice, 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.

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. Gov't Code § 552.147.

552.101, 552.108, 552.130, 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 information pertaining a different department employee. This information, which we have marked, is not responsive to the present request. This decision does not address the public availability of this non-responsive information, and this information need not be released in response to this request.

Section 552.108(a)(1) 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, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 of the Government Code must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The OIG states that case number SC.15.0285.08.DA relates to a pending criminal investigation. Based upon this representation and our review, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *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).

Next, you claim case numbers 07-0642, 06-1492, and 03-0695 are excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that case numbers 07-0642, 06-1492, and 03-0695 pertain to concluded criminal investigations that did not result in convictions or deferred adjudications. Based on your representations and our review, we conclude that section 552.108(a)(2) is generally applicable to case numbers 07-0642, 06-1492, and 03-0695.

We note that section 552.108(a)(2) is generally not applicable to internal administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (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). Case number 03-0695 contains a “use of force report”, which is an administrative record. Although we are cognizant of the fact that the use of force investigation is based on an underlying criminal investigation, the focus of the use of force investigation is on the propriety of an officer’s conduct, not the underlying crime. You do not state, nor does it appear, that the use of force report in the submitted information relates to a criminal investigation into an officer’s conduct. Accordingly, we conclude that the OIG may not withhold this report, which we have marked, under section 552.108(a)(2).

Section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d 177. Thus, with the exception of the basic information, which you state the OIG will release, and the marked use of force report, the OIG may withhold case number SC.15.0285.08.DA under section 552.108(a)(1) of the Government Code and case numbers 07-0642, 06-1492, and 03-0695 under section 552.108(a)(2) of the Government Code.³

You claim the remaining information is excepted from disclosure under section 552.134 of the Government Code, which is applicable to information relating to inmates of the department. Section 552.134(a) 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 that

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

[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[:]

(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). Thus, the legislature explicitly made section 552.134 subject to section 552.029. We find that section 552.134 is generally applicable to a portion of the remaining information. We note, however, that the remaining information includes information concerning an alleged crime involving an inmate and an incident involving the use of force. Accordingly, the basic information about the alleged crime and the use of force is subject to disclosure under section 552.029. Basic information under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. With the exception of the basic information, the OIG must withhold the information we have marked under section 552.134.⁴ The remaining information, however, consists of information pertaining only to department 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.

In summary, with the exception of the basic information and the use of force report, the OIG may withhold case number SC.15.0285.08.DA under section 552.108(a)(1) of the Government Code and case numbers 07-0642, 06-1492, and 03-0695 under section 552.108(a)(2) of the Government Code. Except for the basic information that must be released under section 552.029 of the Government Code, the OIG must withhold the

⁴As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

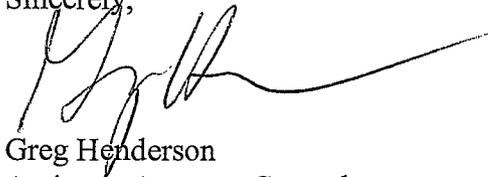
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information we have marked under section 552.134 of the Government Code. As you raise no further exceptions to the disclosure of the remaining information, it must be released.

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, 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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#341857

Enc. Submitted documents

c: Requestor
(w/o enclosures)