



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2009

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

OR2009-07774

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# 345377 (OIG ORR Files: # OR-2009-000086).

The Texas Department of Criminal Justice (the "department") received a request from a former department employee for a copy of the Office of the Inspector General's (the "OIG") investigation report pertaining to a relationship with an offender. You state the department will release some information to the requestor with redactions pursuant to the previous determination issued by this office in Open Records Letter No. 2005-01067 (2005).¹ You also state you are withholding social security numbers under section 552.147 of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information is made expressly public under section 552.022 of the Government Code, which provides, in relevant part, as follows:

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 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.

²We note 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.

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). In this instance, the information submitted by the department consists of cellular telephone bills that are subject to section 552.022(a)(3). Although the department raises section 552.108 of the Government Code, we note this section is not other law that makes information confidential for the purposes of section 552.022(a)(3). *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the documents subject to section 552.022(a)(3) pursuant to section 552.108 of the Government Code. However, the department raises section 552.101 of the Government Code and some of the information is subject to section 552.136 of the Government Code.³ These sections are other laws for purposes of section 552.022, and we will address whether they apply to the submitted information.

We first address the cellular telephone bills subject to section 552.022(a)(3). 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. Section 552.101 encompasses section 508.313 of the Government Code, which provides in part:

(a) All information obtained and maintained [by the Texas Department of Criminal Justice], 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 [of the Texas Department of Criminal Justice] subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a releasee; or

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

- (3) a person directly identified in any proposed plan of release for an inmate.

Gov't Code § 508.313(a); *see also id.* § 508.001(9) ("releasee" means a person released on parole or to mandatory supervision). The cellular telephone bills contain the telephone number of the parolee's brother, and the department asserts the family contact information of the subject parolee is information related to a parolee and made confidential under section 508.313 of the Government Code. The department informs us the requestor is not an entity authorized to obtain the information at issue under section 508.313(c). After reviewing the department's arguments and the submitted information, we agree the phone number of the parolee's brother is subject to section 508.313. This information is not made public under section 552.029 of the Government Code. *See id.* § 508.313(f). Therefore, we conclude the department must withhold the phone number of the parolee's brother from the cellular telephone bills under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.⁴

The cellular telephone bills also contain cellular telephone account numbers excepted from disclosure under section 552.136 of the Government Code. Section 552.136 states "[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). Accordingly, the department must withhold the cellular telephone account numbers in the cellular telephone bills under section 552.136 of the Government Code.

We now turn to the information not subject to section 552.022(a)(3). Section 552.108(a)(1) 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). A governmental body claiming section 552.108 must reasonably explain how and why 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). You inform us there are two cases responsive to the request: number SC.15.0192.08.HU and number IF.CC.0287.2008.HU. You state these cases are interrelated to one another and pertain to investigations of the same criminal allegations. You further explain release of the submitted information "would seriously undermine [the department's] continuing criminal investigation." Based on this representation, we conclude release of the submitted 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. 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).

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

However, section 552.108 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 at 185-86. Thus, with the exception of the cellular telephone bills subject to section 552.022(a)(3) and the basic information, which you state will be released, you may withhold case numbers SC.15.0192.08.HU and IF.CC.0287.2008.HU pursuant to section 552.108(a)(1) of the Government Code.

In summary, with the exception of basic information and the cellular telephone bills, the department may withhold case numbers SC.15.0192.08.HU and IF.CC.0287.2008.HU under section 552.108(a)(1) of the Government Code. From the cellular telephone bills subject to section 552.022(a)(3), the department must withhold (1) the telephone number of the parolee's brother under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code and (2) the cellular telephone account numbers under section 552.136 of the Government Code. The rest of the telephone bills 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,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/rl

Ref: ID# 345377

Enc. Submitted documents

c: Requestor
(w/o enclosures)