



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2010

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

Mr. Erik Brown
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2010-00968

Dear Mr. West and Mr. Brown

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# 368305.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the requestor's resignation. The department's Office of the General Counsel (the "OGC") and Office of the Inspector General (the "OIG") have submitted separate briefs and separate documents that each seeks to withhold from disclosure. The OGC states some of the requested information will be made available to the requestor. The OGC claims the information it has submitted is excepted from disclosure under sections 552.101 and 552.134 of the Government Code. The OIG states it will release some of the requested information with redactions pursuant to the previous determination issued

to the department in Open Records Letter No. 2005-01067 (2005)¹ and section 552.147 of the Government Code.² The OIG claims the information it has submitted is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions claimed and reviewed the submitted information.

First, we address the OIG's claim under section 552.108 of the Government Code, as it is potentially the most encompassing of its claimed exceptions. Section 552.108(a) 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). The OIG asserts its submitted information relates to an ongoing criminal investigation. Based upon this representation, we conclude the release of the information at issue 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).

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 basic information, which the OIG states will be released, the department may withhold the OIG's submitted information pursuant to section 552.108(a)(1) of the Government Code.³

We now address the OGC's claim under section 552.101 of the Government Code. Section 552.101 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:

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.

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.

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

(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
- (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 OGC asserts that the information it has submitted contains releasee information. Upon review, we agree some of the submitted information, which we have marked, is subject to section 508.313. In this instance, the requestor is not an entity authorized to obtain the information at issue under section 508.313(c). The information we marked is also not made public under section 552.029 of the Government Code. *See id.* § 508.313(f). Based on the OGC’s representations and our review, we conclude that the department must withhold the information we have marked in the OGC’s submitted information under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.⁴ However, the remaining information the OGC submitted does not relate to a releasee of the department and thus may not be withheld under section 552.101 in conjunction with section 508.313 of the Government Code.

The OGC also raises section 552.134 of the Government Code for its remaining submitted information. 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 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). We note that none of the OGC’s remaining information concerns inmates confined in a facility operated by or under a contract with the department.

⁴As our ruling is dispositive, we need not address the OGC’s remaining argument for this information.

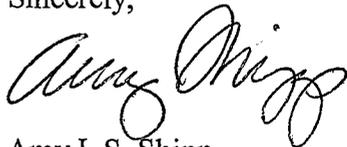
Therefore, none of the OGC's remaining information may be withheld under section 552.134 of the Government Code.

In summary, with the exception of basic information, the department may withhold the OIG's submitted information under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. As no further exceptions are raised, the remaining information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 368305

Enc. Submitted documents

cc: Requestor
(w/o enclosures)