



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2011

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

OR2011-03625

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# 411284 (OIG Open Records 2010-00290).

The Office of Inspector General of the Texas Department of Criminal Justice (the "department") received a request for information pertaining to two specified reports, one named former department employee, three named inmates, and one named individual. You state the department will provide some of the requested information to the requestor. You state some of the requested information no longer exists due to the department's records retention schedule.¹ You inform us the department will redact certain information pursuant to section 552.147 of the Government Code and the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).² You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130,

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

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(b): Open Records Letter No. 2005-01067 (2005) 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.

and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We will first address your arguments under section 552.134 of the Government Code as this exception is potentially the most encompassing. Section 552.134 relates to information about inmates and former inmates of the department. This exception provides in relevant part:

(a) 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). Section 552.134 is explicitly made subject to section 552.029, which provides, in relevant part:

[n]otwithstanding [s]ection 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.

Id. § 552.029(8). Upon review, we agree report numbers 2009-04045, 2008-0184, 2006-2509, 2006-2243, 2006-2198, 2006-2177, SC.15.2422.01.ST, and the information we have marked in report numbers SC.12.0526.96.TL and IF.CC.0337.2008.ST are generally subject to section 552.134. We note, however, the information at issue pertains to incidents involving alleged crimes involving inmates of the department. Under section 552.029, basic information regarding alleged crimes involving an inmate is subject to required disclosure. As such, the department must release basic information regarding the alleged crimes involving inmates pursuant to section 552.029(8). Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Accordingly, except for basic information that must be released under section 552.029(8), the department must withhold report numbers 2009-04045, 2008-0184, 2006-2509, 2006-2243, 2006-2198, 2006-2177, SC.15.2422.01.ST, and the information we have marked in report numbers SC.12.0526.96.TL and IF.CC.0337.2008.ST under section 552.134 of the

Government Code.³ However, we find you have not established how the remaining information in report numbers SC.12.0526.96.TL and IF.CC.0337.2008.ST is “information about an inmate” as contemplated by section 552.134. Rather, the remaining information in these reports pertains to investigations into alleged misconduct by department employees. Thus, section 552.134 is not applicable to the remaining information in report numbers SC.12.0526.96.TL and IF.CC.0337.2008.ST, and the department may not withhold any of that information under section 552.134 of the Government Code.

You assert some of the remaining information is subject to section 552.102(a) of the Government Code. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information in report number IF.CC.0337.2008.ST that must be withheld under section 552.102(a) of the Government Code.

With respect to the remaining information in report number SC.12.0526.96.TL we address your claims under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would interfere with law enforcement), 456 (1987) (release in advance of information regarding location of off-duty police officers would interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would interfere with law enforcement), 409 (1984) (information regarding certain burglaries protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (release of certain information from Department of Public Safety would hamper departmental efforts to detect forgeries of drivers’ licenses), 252

³As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure except to note basic information under section 552.029(8) corresponds to basic front-page information under section 552.108(c) of the Government Code. *See id.* § 552.108(c); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

(1980) (statutory predecessor was 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). The statutory predecessor to section 552.108(b)(1) was 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 argue some of the remaining information in report number SC.12.0526.96.TL contains security threat group or gang information, the release of which would tend to compromise institutional security regarding handling of offenders, divulge potential weaknesses in correctional facility operation, and place correctional facility staff, offenders, and members of the public in jeopardy. Based on these arguments and our review, we conclude that release of the information we have marked in report number SC.12.0526.96.TL would interfere with law enforcement and crime prevention. Therefore, that information may be withheld under section 552.108(b)(1) of the Government Code. However, we conclude that you have not explained how or why release of any of the remaining information in report number SC.12.0526.96.TL would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the remaining information in report number SC.12.0526.96.TL under section 552.108(b)(1).

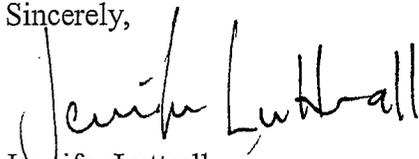
You also raise section 552.108(b)(2) for this information, which excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(b)(2). However, you provide no arguments explaining how the remaining information in report number SC.12.0526.96.TL relates to a criminal investigation that concluded in a result other than conviction or deferred adjudication. We therefore conclude the department may not withhold any of the remaining information in report number SC.12.0526.96.TL under section 552.108(b)(2) of the Government Code.

In summary, except for basic information regarding the alleged crimes involving department inmates, which must be released, the department must withhold department must withhold report numbers 2009-04045, 2008-0184, 2006-2509, 2006-2243, 2006-2198, 2006-2177, SC.15.2422.01.ST, and the information we have marked in report numbers SC.12.0526.96.TL and IF.CC.0337.2008.ST under section 552.134 of the Government Code. The department must withhold the information we have marked in report number IF.CC.0337.2008.ST under section 552.102(a) of the Government Code. The department may withhold the information we have marked in report number SC.12.0526.96.TL under section 552.108(b)(1) of the Government Code. 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 411284

Enc. Submitted documents

c: Requestor
(w/o enclosures)