



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 29, 2011

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

OR2011-05891

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# 415916 (OIG Open Records 2011-00028).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a named inmate. You state some of the requested records have been destroyed pursuant to the department's records retention schedule.<sup>1</sup> You state you will redact information under section 552.147 of the Government Code and the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005).<sup>2</sup> You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.130, and 552.134 of the Government Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</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 its current or former employees under section 552.117(a)(3) of the Government Code, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act. *See* Open Records Decision No. 673 (2001) (listing elements of first type of previous determination under section 552.301(a) of the Government Code). Further, 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. *See* Gov't Code § 552.147(b).

<sup>3</sup>Although you also raise section 552.108 of the Government Code as an exception to disclosure of the requested information, you have provided no arguments regarding the applicability of this section. We therefore assume you no longer assert section 552.108. *See* Gov't Code §§ 552.301(b), (e), .302.

Section 552.134 of the Government Code relates to inmates of the department and 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 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 under Section 552.021:

. . . .  
(8) basic information regarding . . . an incident involving the use of force, or an alleged crime involving the inmate.

*Id.* § 552.029(8). Upon review, we find the submitted files pertain to inmates confined in a facility operated by the department and are, therefore, subject to section 552.134. We note, however, file UF.13.1037.95.FE pertains to an incident involving the use of force and files IF.SA.00175.2009.GL and 08-2700 pertain to alleged crimes involving inmates during their confinement. Thus, while the department must generally withhold the submitted information under section 552.134, the department must release basic information regarding these files pursuant to section 552.029(8), unless this basic information is otherwise excepted from disclosure under the Act. 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.

Although not excepted from disclosure under section 552.134, we note that some of the basic information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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 the common-law right of privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders,

attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decision Nos. 393 at 2, 339 (1982), 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Accordingly, the department must withhold the basic information in file 08-2700 in its entirety under section 552.101 in conjunction with common-law privacy. Also, the complainant in file IF.SA.00175.2009.GL is a victim of an alleged sexual assault. Therefore, when releasing the basic information for file IF.SA.00175.2009.GL, the department must withhold the complainant's identifying information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of basic information in files UF.13.1037.95.FE, IF.SA.00175.2009.GL, and 08-2700, the department must withhold the submitted information under section 552.134. The department must withhold the basic information in file 08-2700 in its entirety. In releasing the remaining basic information, the department must withhold the complainant's identity in file IF.SA.00175.2009.GL.

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

Sincerely,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/tf

Ref: ID# 415916

Enc. Submitted documents

c: Requestor  
(w/o enclosures)