



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2015

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

OR2015-05869

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# 557946 (OIG Open Records 2015-00002).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to two specified incidents and any information pertaining to a named inmate's behavior while he was at the Clements Unit. You state you do not have some of the requested information.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.1175, 552.134, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[.]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you raise sections 552.103 and 552.108 of the Government Code for this information, these exceptions are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold any of the information subject to section 552.022(a)(17), which we have marked, under section 552.103 or section 552.108 of the Government Code. However, the department raises sections 552.102(a), 552.117, 552.1175, and 552.134 of the Government Code for this information, which make information confidential for purposes of section 552.022. Accordingly, we will consider the applicability of these exceptions to the court-filed documents subject to section 552.022(a)(17). Further, we will address the department's arguments against disclosure of the remaining information.

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the requested information. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an open criminal case that is currently on appeal. Based on your representation and our review, we conclude the release of the submitted information not subject to section 552.022(a)(17) 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) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

Section 552.108, however, 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 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). We note basic information does not include the identities of victims, witnesses, or other involved parties, but does include the identity of a complainant. *See id.* Thus, with the exception of basic information, the department may withhold the information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code.²

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991). Although basic information includes an arrestee's social security number, we 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. Gov't Code § 552.147(b).

Section 552.134 of the Government Code relates to inmates of the department and provides, in relevant part, as follows:

(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.

(b) Subsection (a) does not apply to:

...

(2) information about an inmate sentenced to death.

Gov't Code § 552.134(a), (b)(2). You state the remaining information pertains to inmates of the department. However, in this instance, we note the remaining information relates to an inmate sentenced to death. We note section 552.134 is not applicable to information about such an inmate. Accordingly, none of the remaining information may be withheld under section 552.134 of the Government Code. *See id.* § 552.134(b)(2).

Section 552.102(a) of the Government Code 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 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.*, 354 S.W.3d 336 (Tex. 2010). Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, sections 552.102(a) and 552.117 are applicable only to information the department holds in an employment context. Upon review, we find the department does not maintain the information at issue in an employment context. Therefore, the department may not withhold any of the remaining information under section 552.102(a) or section 552.117 of the Government Code.

Section 552.1175 of the Government Code provides, in part:

(a) This section applies only to:

...

(3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

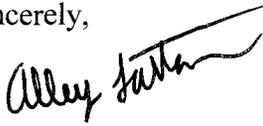
Id. § 552.1175(a)(3), (b). We note the marked court-filed documents subject to section 552.022(a)(17) contain the information of a deceased corrections officer that may be subject to section 552.1175 of the Government Code. We note the protection afforded by section 552.1175 generally does not lapse at death, as it is also intended to protect the privacy of the individual's family members and emergency contacts. We note, however, because the protection of dates of birth under section 552.1175 is intended solely to protect the privacy of the employee, it lapses at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976). Thus, if the officer whose information is at issue elected to restrict access to his information in accordance with section 552.1175(b), when releasing the marked court-filed documents subject to section 552.022(a)(17), the department must withhold the information we have marked under section 552.1175 of the Government Code. If the officer did not elect to restrict access to the information we have marked, then the department may not withhold this information under section 552.1175 of the Government Code.

In summary, with the exception of basic information, which must be released, the department may withhold the information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code. When releasing the marked court-filed documents subject to section 552.022(a)(17) of the Government Code, the department must withhold the information we have marked under section 552.1175 of the Government Code, if the officer whose information is at issue elected to restrict access to his information in accordance with section 552.1175(b) of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Alley Latham", written in a cursive style.

Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 557946

Enc. Submitted documents

c: Requestor
(w/o enclosures)