



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2015

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

OR2015-13761

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# 570410.

The Texas Department of Criminal Justice (the "department") received a request for all documentation regarding a named individual's incarceration. The department states it no longer has some of the requested information due to it being destroyed pursuant to the department's retention policy.¹ The department states it is releasing some of the requested information. The department states it will redact information pursuant to sections 552.1175(f) and 552.147(b) of the Government Code and information subject to section 552.117(a)(2) of the Government Code in accordance with Open Records Decision No. 670 (2001).² The department claims the submitted information is excepted from

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We note section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, dates of birth, social security number, and family member information of certain individuals who properly elect to keep this information confidential. *See Gov't Code* § 552.1175(b), (f). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.1175(h). *See id.* § 552.1175(g), (h). 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 id.* § 552.147(b). Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6.

disclosure under sections 552.101, 552.102, 552.108, and 552.134 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

Section 552.134 of the Government Code 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 [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, the following:

Notwithstanding 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:

- (1) the inmate's name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- . . .
- (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(1)-(2), (8). Thus, the legislature explicitly made section 552.134 subject to section 552.029. The department contends the submitted information falls within the scope of section 552.134. We agree the submitted information pertains to an inmate confined in a facility operated by the department and is subject to section 552.134 of the Government Code. We note some of the submitted information consists of the information subject to subsections 552.029(1) and (2). The department must release this information pursuant to section 552.029. *See id.* Additionally, we note some of the submitted information pertains to an incident involving the use of force and an alleged crime involving the inmate. Therefore, the department must release basic information about the incident at issue pursuant to section 552.029(8). *See id.* For purposes of section 552.029(8), basic information includes the time and place of the incident, the names of inmates and department employees who were involved, a brief narrative of the incident, a brief description of any injuries

sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. Therefore, except for the information subject to section 552.029 of the Government Code, which the department must release, the department must withhold the submitted information under section 552.134 of the Government Code.³

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 570410

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address the department's remaining arguments against disclosure. We note basic information under section 552.029(8) of the Government Code corresponds to the basic information that may not be withheld under section 552.108 of the Government Code. See Gov't Code § 552.108(c) (basic information about an arrested person, an arrest, or a crime is not excepted under section 552.108).