



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 23, 2015

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

OR2015-24625

Dear Mr. Smeltzer:

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# 588371.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the Mineral Wells Pre-Parole Transfer Facility (the "facility").<sup>1</sup> You claim the requested information is excepted from disclosure under sections 552.101, 552.104, 552.108, 552.110, and 552.134 of the Government Code. You also state release of this information may implicate the proprietary interests of third parties, which you state you notified. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Although the department argues the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties,

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<sup>1</sup>We note the department asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

not the interests of a governmental body. *See* Gov't Code § 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from third party). Thus, we do not address the department's argument under section 552.110. We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from a third party explaining why its information should not be released. Therefore, we have no basis to conclude any third party has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm); 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold any of the information at issue on the basis of any proprietary interest any third party may have in it.

We first address your argument under section 552.134 of the Government Code, as it is potentially the most encompassing. Section 552.134 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 contend the submitted information contains information about non-death row offenders. Upon review, we find the information we marked consists of information about non-death row inmates confined in facilities operated under a contract with the department for purposes of section 552.134. We note, however, the information pertains to alleged use of force and crimes involving inmates. Basic information regarding these incidents is subject to required disclosure under section 552.029(8) of the Government Code and may not be withheld under section 552.134. *See id.* § 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. Therefore, with the exception of basic information, the department must withhold the information we have marked under

section 552.134 of the Government Code.<sup>2</sup> However, we note find none of the remaining information pertains to an inmate for purposes of section 552.134. Accordingly, we find you have not demonstrated section 552.134 is applicable to the remaining information, and the department may not withhold any of the remaining information under section 552.134 of the Government Code.

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 section 508.313 of the Government Code, which provides in part:

(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.

...

(f) This section does not apply to information that is subject to required public disclosure under Section 552.029.

*Id.* § 508.313(a), (f); *see also id.* § 508.001(9) (“releasee” means a person released on parole or to mandatory supervision). You assert the remaining information is confidential under section 508.313. However, we note some of the remaining information is subject to section 552.029. Further, upon review of the remaining information and your arguments, we find you have not demonstrated the information at issue pertains to a releasee or an inmate of the institutional division of the department subject to release on parole, release to mandatory supervision, or executive clemency. Accordingly, none of the remaining information may be withheld under section 552.101 on the basis of section 508.313.

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). You contend the remaining information pertains to a competitive bidding situation. However, we find the department has failed to demonstrate the release of the remaining information would give advantage to a competitor or bidder. Thus, the department may not withhold the remaining information under section 552.104(a).

Section 552.108(b) 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 (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

The department explains revealing the remaining information would hinder law enforcement efforts of the department by compromising the physical security of the facility. You also state release of the remaining information “would allow an incarcerated offender to identify and predict shortcomings in [the facility’s] emergency responses or security procedures and exploit weaknesses to effect a number of criminal purposes, including staff assaults or escape.” Upon review, we find the department has demonstrated release of the information we have marked would interfere with law enforcement. Accordingly, the department may withhold the information we have marked under section 552.108(b)(1) of the Government

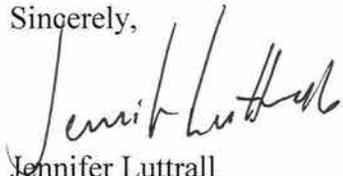
Code. However, we find you have not adequately explained how release of the remaining information at issue would interfere with law enforcement or crime prevention. Therefore, we conclude the department may not withhold any of the remaining information at issue under section 552.108(b)(1).

In summary, with the exception of basic information subject to section 552.029(8), which must be released, the department must the information we have marked under section 552.134 of the Government Code. The department may withhold the information we have marked 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

Ref: ID# 588371

Enc. Submitted documents

c: Requestor  
(w/o enclosures)