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November 15, 2016

Mr. John C. West
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Texas Department of Criminal Justice
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Ms. Sharon Felfe Howell
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OR2016-25439

Dear Mr. West and Ms. Howell:

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# 634275.

The Texas Department of Criminal Justice (the "department") received a request for twelve categories of information including general population rosters, key logs, staffing plans, and audits pertaining to a specified facility; specified correspondence; complaints regarding a named inmate; and information related to a specified death. The department's Office of the General Counsel (the "OGC") and Office of the Inspector General (the "OIG") have submitted separate briefs, as well as separate documents that each seeks to withhold from disclosure. The OGC states it has provided some information to the requestor. The OGC states some of the information at issue is being withheld pursuant to a previous determination issued to the department in Open Records Letter No. 2004-6370 (2004).¹ The OIG and OGC each claim

¹Open Records Letter No. 2004-6370 is a previous determination issued to the department authorizing it to generally withhold shift rosters for its prison units from public disclosure for security reasons under section 552.108(b)(1) of the Government Code.

its information at issue is excepted from disclosure under sections 552.108 and 552.134 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative samples of information.²

Initially, we address the OIG's argument under section 552.108 of the Government Code. Section 552.108(a)(1) 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 claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The OIG states the submitted information relates to an active criminal investigation and release of the information would interfere with that investigation. *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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable. Accordingly, the OIG may withhold its submitted information under section 552.108(a)(1) of the Government Code.³

Next, we address the OGC's arguments for its submitted information. Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(b)(1) 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." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

³As our ruling is dispositive, we need not address the OIG's remaining argument against disclosure.

specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 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).

The OGC states portions of its submitted information consist of the department's staffing plan and daily key logs. The OGC argues the release of this information would compromise security measures and undermine law enforcement and crime prevention. The OGC states that if released, the information "could 'help inmates in their future attempts to circumvent the security of the prison unit' and 'could be used to compromise the physical security of the unit.'" Having considered the OGC's argument, we conclude it may withhold the information at issue, which it has marked, under section 552.108(b)(1).

Section 552.134 of the Government Code is applicable to information related to inmates of the department. Section 552.134 states, in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the [department] is excepted from the requirements of Section 552.021 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). However, section 552.029 of the Government Code provides:

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:

...

(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). Thus, the legislature explicitly made section 552.134 subject to section 552.029. Upon review, we agree the OGC's remaining information constitutes information about an inmate for purposes of section 552.134. However, some of the submitted information at issue pertains to alleged crimes involving the inmate. Thus, pursuant to section 552.029(8), the OGC must release basic information from the remaining information. Basic information under section 552.029(8) includes the time and place of the incident, the names of inmates and of 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. Accordingly, with the exception of basic information, the OGC must withhold its remaining information at issue under section 552.134 of the Government Code.

In summary, the OIG may withhold its submitted information under section 552.108(a)(1) of the Government Code. The OGC may withhold the information it marked under section 552.108(b)(1) of the Government Code. With the exception of basic information, which must be released, the OGC must withhold its remaining information under section 552.134 of the Government Code.

The OGC asks this office to issue a previous determination permitting it to withhold key logs and unit staffing plans under section 552.108 of the Government Code. *See id.* § 552.301 (a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 634275

Enc. Submitted documents

c: Requestor
(w/o enclosures)