



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2017

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

OR2017-29028

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# 689102.

The Office of the Inspector General of the Texas Department of Criminal Justice (the "department") received a request for all documents pertaining to a named individual. You state you will redact information under sections 552.117 and 552.1175 of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.¹

¹Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c). 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, social security number, date of birth, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See id.* § 552.1175(b), (f). 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).

You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, 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). You state case number 1600005540 relates to an open criminal investigation. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publishing 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). Thus, section 552.108(a)(1) of the Government Code is applicable to case number 1600005540.

However, we note, and you acknowledge, section 552.108 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; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may generally withhold case number 1600005540 under section 552.108(a)(1) of the Government Code.²

The department asserts case number 2014.04224 is excepted from release under section 552.134 of the Government Code. Section 552.134(a) relates to inmates of the Texas Department of Criminal Justice (the “department”) and provides the following:

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.

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 under section 552.134 of the Government Code. *See* Gov’t Code § 552.029(8) (basic information pertaining to alleged crime involving inmate not excepted under section 552.134).

Gov't Code § 552.134(a). Section 552.029 of the Government Code provides, in 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 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). Upon review, we agree case number 2014.04224 constitutes information about an inmate for purposes of section 552.134. However, the information at issue pertains to an alleged crime involving the inmate. Thus, pursuant to section 552.029(8) the department must release basic information from case number 2014.04224. 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.³ With the exception of basic information under section 552.029(8) of the Government Code, which must be released, the department must generally withhold case number 2014.04224 under section 552.134 of the Government Code.⁴

We note the requestor is a representative of the Office of Capital and Forensic Writs (the "OCFW") and, thus, may have a right of access to some of the submitted information. Section 411.1272 of the Government Code provides:

The [OCWF] and a public defender's office are entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information [{"CHRI"}] maintained by the [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender's office has been appointed.

Id. § 411.1272. In addition, section 411.087(a) of the Government Code provides:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this

³We note basic information for section 552.134 does not include the identities of witnesses.

⁴As we are able to reach these determinations, we need not address the department's remaining arguments against disclosure of this information.

subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). “Criminal history record information” (“CHRI”) is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). We note the submitted information contains CHRI. Accordingly, the requestor may be authorized to obtain the CHRI at issue from the department pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the OCFW is appointed. *See id.* §§ 411.1272, .087(a)(2). Although the department raises sections 552.108 and 552.134 of the Government Code for this information, we note a statutory right of access generally prevails over exceptions to public disclosure under the Act. *See Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).* Therefore, if the department determines the information at issue relates to a criminal case in which an attorney compensated by the OCFW is appointed, the department must release the CHRI at issue to the requestor. In that case, with the exception of basic information, which must be released, the department may withhold the remaining information pertaining to case number 1600005540 under section 552.108(a)(1) of the Government Code and, with the exception of basic information under section 552.029(8) of the Government Code, which also must be released, the department may withhold the remaining information pertaining to case number 2014.04224 under section 552.134 of the Government Code. However, if the department determines the information at issue does not relate to a criminal case in which an attorney compensated by the OCFW is appointed, then with the exception of basic information, which must be released, the department may withhold case number 1600005540 under section 552.108(a)(1) of the Government Code, and with the exception of basic information under section 552.029(8) of the Government Code, which also must be released, the department must withhold case number 2014.04224 under section 552.134 of the Government Code.

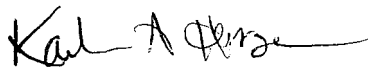
In summary, if the department determines the information at issue relates to a criminal case in which an attorney compensated by the OCFW is appointed, the department: (1) may withhold case number 1600005540 under section 552.108(a)(1) of the Government Code, with the exception of CHRI and basic information, which must be released; and (2) must

withhold case number 2014.04224 under section 552.134 of the Government Code, with the exception of CHRI and basic information under section 552.029(8) of the Government Code, which must be released. However, if the department determines the information at issue does not relate to a criminal case in which an attorney compensated by the OCFW is appointed, then with the exception of basic information, which must be released, the department may withhold case number 1600005540 under section 552.108(a)(1) of the Government Code, and with the exception of basic information under section 552.029(8) of the Government Code, which also must be released, the department must withhold case number 2014.04224 under section 552.134 of the Government Code.

Finally, the department asks this office to issue a previous determination that would permit it to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting a decision form this office. We decline to issue such a previous determination at this time. Accordingly, 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/gw

Ref: ID# 689102

Enc. Submitted documents

c: Requestor
(w/o enclosures)