



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 14, 2019

Mr. William Overton
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2019-01085

Dear Mr. Overton:

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# 745962 (OGC# ZT0177).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified incident, as well as any reports, complaints, and any corresponding disciplinary actions relating to certain specified department employees. The department claims the submitted information is excepted from disclosure under sections 552.108 and 552.134 of the Government Code. We have considered the exceptions the department asserts and reviewed the submitted representative sample of information.¹

Section 552.134(a) of the Government Code relates to inmates of 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

¹We 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 that those records contain substantially different types of information than that submitted to this office.

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:

...

(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. The department contends the submitted information falls within the scope of section 552.134. Upon review, we agree some of the information at issue constitutes information about an inmate confined in a facility operated by the department and is subject to section 552.134. However, we note the information at issue pertains to an incident involving the use of force. Therefore, the department must release basic information regarding the use of force 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 directly 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.² Accordingly, with the exception of basic information, which the department must release pursuant to section 552.029(8) of the Government Code, the department must withhold the information we marked under section 552.134 of the Government Code.³ Although the department asserts the remaining information is confidential under section 552.134, upon review, we find this information pertains to investigations of the conduct of the employees specified in the request during their employment with the department. Such information does not constitute “information about an inmate” for purposes of section 552.134 and the department may not withhold it on that basis.

²We note basic information does not include the identities of witnesses.

³As our ruling is dispositive, we need not address the remaining argument against disclosure of the information at issue.

Section 552.108(b)(1) of the Government Code 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 . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” *Id.* § 552.108(b)(1). 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (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 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.*, ORDs 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). Upon review, we find the department failed to demonstrate release of the remaining information would interfere with law enforcement or crime prevention. Consequently, the department may not withhold this information under section 552.108(b)(1).

Section 552.117(a)(3) of the Government Code excepts from public disclosure the home address and telephone number, social security number, emergency contact information, and family member information of current or former employees of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code.⁴ Gov’t Code § 552.117(a)(3). Upon review, we find the information we marked is confidential pursuant to section 552.117(a)(3). Accordingly, the department must withhold the information we marked under section 552.117(a)(3) of the Government Code.


⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, with the exception of basic information, which the department must release pursuant to section 552.029(8) of the Government Code, the department must withhold the information we marked under section 552.134 of the Government Code. The department must withhold the information we marked under section 552.117(a)(3) of the Government Code. The department must release the remaining information.

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 that reads "Cole Hutchison". The signature is written in a cursive style with a horizontal line striking through the middle of the name.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/mo

Ref: ID# 745962

Enc. Submitted documents

c: Requestor
(w/o enclosures)