



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2019

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

OR2019-07515

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# 754980 (OGC# DT0111).

The Office of General Counsel and the Office of the Inspector General (the "OIG") of the Texas Department of Criminal Justice (collectively, the "department") received two requests from the same requestor for seven categories of information pertaining to the requestor and specified reports. The OIG states it will withhold information under sections 552.024, 552.1175, and 552.147 of the Government Code.¹ The department claims the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.117,

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b) of the Government Code, without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, date of birth, social security number, 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(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 under the Act. *See* Gov't Code § 552.147(b).

552.134, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.²

Initially, you note some of the submitted information is not responsive to the present request because it does not pertain to any of the information requested by the requestor. This ruling does not address the public availability of the non-responsive information, which you marked, and the department need not release it in response to this request.

Section 552.134 of the Government Code provides, 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). Section 552.134 is explicitly made subject to section 552.029, which provides in relevant 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). You contend the information you marked falls within the scope of section 552.134. Upon review, we agree the information at issue pertains to an inmate confined in a facility operated by the department and subject to section 552.134. However, we note some of the information at issue consists of a use of force report pertaining to a use of force incident involving an inmate. Basic information regarding a use of force incident is subject to required disclosure under section 552.029(8) of the Government Code. 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

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

incident. Accordingly, with the exception of basic information, which must be released, the department must withhold the information you marked under section 552.134 of the Government Code.³

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 . . . 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 information it indicated pertains to an active criminal investigation and pending prosecution, and release of this information would interfere with the investigation and prosecution of the case. Based upon the OIG’s representations, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *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). Thus, we conclude section 552.108(a)(1) of the Government Code is applicable to the information indicated by the OIG.

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 withhold the information indicated by the OIG under section 552.108(a)(1) of the Government Code.⁴

Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). The department explains the submitted employee identification numbers are used to access government accounts and criminal databases. Thus, the department must withhold the employee identification

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴As our ruling is dispositive, we do not address the OIG’s 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 incident involving use of force or alleged crime involving inmate not excepted under section 552.134).

numbers you marked in the remaining information under section 552.136 of the Government Code.

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. *Id.* § 552.117(a)(3). Additionally, we note section 552.117 protects personal privacy, and the requestor is one of the individuals whose information is at issue. Thus, the requestor has a right of access to his information pursuant to section 552.023 of the Government Code, and the department may not withhold the information pertaining to him under section 552.117 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4. Accordingly, the department must withhold the information we marked under section 552.117(a)(3) of the Government Code. However, none of the remaining information you marked is of the type made confidential under section 552.117(a)(3) of the Government Code and, thus, none of it may be withheld on that basis.

Section 552.108(b) 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 (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 offeree 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). 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).

You state the submitted video recordings consist of the interior of a department correctional facility. You state the recordings reveal movements of correctional officers and inmates, the

layout of the interior of the facility at issue, and blind spots hidden from the view of the cameras. You argue release of this information would compromise the safety of the correctional facility at issue. Upon review, we find release of the information at issue would interfere with law enforcement. Therefore, the department may withhold the submitted video recordings under section 552.108(b)(1) of the Government Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “to facilitate the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information you marked consists of communications between department attorneys and employees that were made for the purpose of providing legal services to the department. You state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the

information you marked consists of privileged attorney-client communications. Therefore, the department may withhold the information you marked under section 552.107(1) of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). We note the remaining information includes the requestor’s date of birth. Because section 552.102 protects personal privacy, the requestor has a right of access to his own date of birth under section 552.023 of the Government Code and the department may not withhold it from him under section 552.102(a). See Gov’t Code § 552.023(a); ORD 481 at 4. Upon review, we find the department must withhold the dates of birth we marked under section 552.102(a) of the Government Code.

In summary, with the exception of basic information, which must be released, the department must withhold the information you marked under section 552.134 of the Government Code. With the exception of the basic information, which must be released, the department may withhold the information indicated by the OIG under section 552.108(a)(1) of the Government Code. The department must withhold the employee identification numbers you marked in the remaining information under section 552.136 of the Government Code. The department must withhold the information we marked under section 552.117(a)(3) of the Government Code. The department may withhold the submitted video recordings under section 552.108(b)(1) of the Government Code. The department may withhold the information you marked under section 552.107(1) of the Government Code. The department must withhold the dates of birth we marked under section 552.102(a) of the Government Code. The department must release the remaining information.⁵

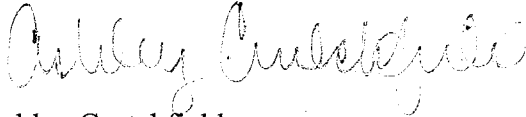
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

⁵We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

[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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/mo

Ref: ID# 754980

Enc. Submitted documents

c: Requestor
(w/o enclosures)