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ATTORNEY GENERAL OF TEXAS

June 18, 2019

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

OR2019-16487

Dear Mr. Sfeir:

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# 771566 (OGC# PP0111).

The Texas Department of Criminal Justice (the "department") received a request for records pertaining to a specified former inmate. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim 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 inmate who is confined in a facility operated or under a contract with the department.

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

Gov't Code § 552.134(a). Section 552.134 is explicitly made subject to section 552.029, which provides, in pertinent part:

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). You contend the submitted information falls within the scope of section 552.134. Upon review, we agree the submitted information pertains to an inmate confined in a facility operated by the department and is subject to section 552.134. However, we note a portion of the information at issue pertains to an incident involving the use of force. Thus, pursuant to section 552.029(8), the department must release basic information concerning the incident involving the use of force. 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. Accordingly, with the exception of basic information, the department must withhold the submitted information under section 552.134 of the Government Code.²

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the common-law physical safety exception. The Texas Supreme Court has recognized a separate common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119.

You argue the basic information is excepted under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. Upon review, we conclude you have not demonstrated release of any of the information at issue would subject anyone to a specific risk of harm. Accordingly, the department may not withhold any of the basic

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

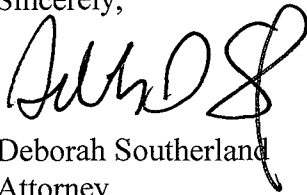
information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

In summary, with the exception of basic information, which must be released pursuant to section 552.029 of the Government Code, the department must withhold the submitted information under section 552.134 of the Government Code.

The department also asks this office to issue a previous determination that would authorize it to withhold information without seeking a ruling from this office, specifically information related to non-death-row offenders under section 552.134 of the Government Code and video recordings and images subject to section 552.108(b)(1) of the Government Code. *See* 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 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,



Deborah Southerland
Attorney
Open Records Division

DS/gw

Ref: ID# 771566

Enc. Submitted documents

c: Requestor
(w/o enclosures)