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ATTORNEY GENERAL OF TEXAS

January 8, 2020

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

OR2020-00736

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# 805161 (OGC# JN0015).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified incident and two specified rosters. You state the department will withhold information pursuant to the previous determination issued to the department in Open Records Letter No. 2004-6370 (2004).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.134(a) of the Government Code relates to inmates of the department and provides the following:

¹ Open Records Letter No. 2004-6370 is a previous determination issued to the department authorizing it to withhold shift rosters for its prison units from public disclosure for security reasons under section 552.108(b)(1) of the Government Code without requesting a decision from this office.

² We 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.

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.

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). Upon review, we agree the information you marked constitutes information about an inmate for purposes of section 552.134. However, some of the information at issue pertains to an incident involving the use of force. Thus, pursuant to section 552.029 the department must release basic information pertaining to that incident. 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. With the exception of basic information related to the incident involving the use of force, the department must withhold the information you marked under section 552.134 of the Government Code.³

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. *Id.* § 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

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

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 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).

You state the submitted Carry-On-Person Chemical Agent Daily Issuance and Return Logs “show when, where, and how many correctional officers carry chemical agents during a shift.” You argue revealing this information would interfere with law enforcement by compromising security and safety. Based on your arguments and our review, we agree release of the information at issue would interfere with law enforcement. Accordingly, the department may withhold the information you marked under section 552.108(b)(1) of the Government Code.

In summary, with the exception of basic information related to the incident involving the use of force, which must be released, the department must withhold the information you marked under section 552.134 of the Government Code. The department may withhold the remaining information you marked under section 552.108(b)(1) of the Government Code.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Matthew Taylor
Assistant Attorney General
Open Records Division

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Mr. William Overton - Page 4

Ref: ID# 805161

Enc. Submitted documents

c: Requestor
(w/o enclosures)