



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2020

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

OR2020-24591

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# 846592 (OGC#MW0009).

The Texas Department of Criminal Justice (the "department") received a request for records pertaining to the incarceration of a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 508.313(a) of the Government Code, which provides the following:

- (a) All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

¹ We assume that 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.

- (1) an inmate of the institutional division [of the department] subject to release on parole, release to mandatory supervision, or executive clemency;
- (2) a releasee; or
- (3) a person directly identified in any proposed plan of release for an inmate.

Id. § 508.313(a); *see id.* § 508.001(9) (“releasee” means a person released on parole or to mandatory supervision). The department states the information labeled as Tab B of the submitted information consists of parole records that are subject to section 508.313 of the Government Code. The department also states the requestor is not authorized to obtain this information under section 508.313(c). *See id.* § 508.313(c). Further, there is no indication this information is made public under chapter 62 of the Code of Criminal Procedure or section 552.029 of the Government Code. *See id.* § 508.313(e), (f). Accordingly, the department must withhold the information labeled as Tab B under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code.

Section 552.134(a) 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 by or under a contract with the department.

Id. § 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:

- (1) the inmate’s name, identification number, age, birthplace, department photograph, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

...

- (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(1), (8). On review, we agree the remaining information constitutes information about an inmate for purposes of section 552.134. However, the records contain

information that concerns the inmate's general state of health, the nature of injuries suffered by the inmate, and alleged crimes involving the inmate. Thus, pursuant to section 552.029, the department must release the information revealing the inmate's general state of health, the nature of injuries suffered by the inmate, and basic information concerning alleged crimes involving the inmate. 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. The department must withhold the remaining information under section 552.134 of the Government Code.²

Section 552.101 of the Government Code also encompasses section 501.008 of the Government Code, which provides, in relevant part, the following:

(c) A report, investigation, or supporting document prepared by the department in response to an inmate grievance is considered to have been prepared in anticipation of litigation and is confidential, privileged, and not subject to discovery by the inmate in a claim arising out of the same operative facts as are alleged in the grievance.

Id. § 501.008(c). The department claims the basic information is confidential under section 501.008(c). However, we find the department has failed to demonstrate the basic information consists of a report, investigation, or supporting document prepared by the department for purposes of section 501.008(c). *See id.* Thus, the department may not withhold any portion of the basic information under section 552.101 of the Government Code in conjunction with section 501.008(c) of the Government Code.

In summary, the department must withhold the information labeled as Tab B under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. Except for the information revealing the inmate's general state of health, the nature of injuries suffered by the inmate, and basic information concerning alleged crimes involving the inmate, which must be released, the department must withhold the remaining information under section 552.134 of the Government Code.

Finally, the department asks this office to issue a previous determination permitting 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 from this office. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). However, 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.

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

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/be

Ref: ID# 846592

Enc. Submitted documents

c: Requestor
(w/o enclosures)