

June 24, 2021

Bryan Collier, TDCJ Executive Director
861 B IH 45 North
Huntsville, TX 77320
(936) 437-2101

Dear Director Collier:

We are writing to express our deep concern regarding TDCJ’s plan to move forward with future executions, despite the lack of public accountability for the enormous mistakes of the Department with respect to the last month’s execution of Quintin Jones and with no assurances that upcoming executions will be handled more competently. John Hummel is set to be executed in just six days, on June 30, 2021. We ask that **you request from Governor Abbott a thirty day stay of the execution** of Mr. Hummel to first provide the public with a detailed accounting of what went wrong at Mr. Jones’s execution and describe the steps TDCJ is taking to ensure the mistakes are not repeated.

The Grave Mistakes by TDCJ in Carrying Out the Execution of Quintin Jones

On May 19, 2021, Texas executed Quintin Jones with no media witnesses present to observe and document the execution. When Texas reinstated the death penalty in the 1970s, the Northern District of Texas held that banning the media from accessing “the execution chamber . . . infringes on the First Amendment freedom of press,” and ordered the State to permit media witnesses to attend executions as part of its execution protocol. *Garrett v. Estelle*, 424 F. Supp. 468, 472 (N.D. Tex. 1977), overruled in separate part by *Garret v. Estelle*, 556 F.2d 1274 (5th Cir. 1977). The court’s directive is now reflected in the Texas Administrative Code, which provides for access for five reporters: (1) one reporter from the AP; (2) one reporter from the Huntsville Item; and (3) three print or broadcast reporters. 37 Tex. Admin. Code § 152.21.

Since the first modern execution in 1982, Texas had carried out 570 executions before Mr. Jones – all with media witnesses, as required by the law. Mr. Jones’s execution was different.

Two reporters had traveled to the prison to attend the execution of Mr. Jones: Joseph Broan, the editor of the Huntsville Item, and Michael Graczyk, the AP Reporter. The two reporters were waiting with Jeremy Desel, spokesperson for the TDCJ, across the street from where the execution occurred. Mr. Desel was tasked with escorting them to the execution, but he never did because, in his words, “somewhere in that mix there was never a phone call made to this office for me to accompany the witnesses across the street into the Huntsville Unit.”¹

¹ Juan A. Lozano and Michael Graczyk, *Absent Media, Texas Executes Inmate Who Killed Great Aunt*, AP NEWS (May 19, 2021), <https://apnews.com/article/texas-executions-lifestyle-747fc8994706df9dee9e64909c464b99>.

Mr. Desel repeatedly apologized for the “critical error” and promised an investigation by the agency.² He noted that there were a number of new staff members who had never previously participated in an execution.³

These events were of major concern to the media, the public, and the ACLU. TDCJ broke its own protocols and carried out an unconstitutional execution. The day after the execution, the ACLU called for an investigation and a halt of executions until the investigation was complete.

There have been no public reports of any investigation by TDCJ regarding the failures during the execution of Quintin Jones.

Stonewalling of Public Accountability

Following the execution, on June 4, 2021, the ACLU of Texas submitted a request for public records related to the May 19, 2021 execution of Mr. Jones. Ex. A. The ACLU requested information about how the media witnesses were selected, the execution protocol, and information about the internal and external investigations of TDCJ’s failures with respect to Mr. Jones’s execution. The ACLU noted that another execution was scheduled for June 30, 2021 and asked for a response within 7 days.

On June 16, 2021, the Director of Legal Affairs of TDCJ responded with a letter asserting that all of the responsive documents are exempt from disclosure and stating its intent to request the Attorney General to issue a decision about disclosure of the documents. Ex. B. TDCJ did not provide a single document or even a single sentence about the conclusions of its internal investigation.

Initially, TDCJ invoked exceptions 552.028 and all of 552.101 to 552.158, including exceptions that clearly do not and cannot apply to the ACLU of Texas’s request. For example, 552.028 exempts information requested from an “individual who is imprisoned or confined in a correctional facility” or an “agent of that individual.” Savannah Kumar and Adriana Piñon, the requestors, are attorneys with the non-profit the American Civil Liberties Union of Texas (ACLU of Texas). TDJC also invoked exceptions for everything from “sensitive crime scene images” to “rare books” to “motor vehicle inspection information.” See §§ 552.1085; 552.120; 552.129. This striking response sought to shroud a troubling and fundamental failure of government transparency in yet more secrecy.

On June 23, 2021, the Director of Legal Affairs sent the Office of the Attorney General a letter continuing to assert that the responsive records are confidential, but narrowing the relevant exceptions to eight sections of the Government Code, including sections 552.101, 552.103, 552.108, 552.1081, 552.111, 552.136, 552.137, and 552.152. Ex. C. Again, however, this response invokes exceptions that clearly do not apply and/or could be addressed with targeted redactions, rather than blanket withholdings. For example, the ACLU’s request specifically stated that any responsive records “should not include the names or personal information of individuals involved in arranging media access to the execution,” yet TDJC nevertheless invoked exceptions that appear to cover such information.

²Jolie McCullough, *For the First Time in More Than 40 Years, Media Were Not Allowed to Witness a Texas Execution*, KLTv, May 21, 2021, <https://www.kltv.com/2021/05/21/first-time-more-than-years-media-were-not-allowed-witness-texas-execution/>; *Id.*

³ *Id.*

Pursuant to Section 552.306, the Attorney General has 45 days from TDJC’s request for a decision to render his open records decision. TDCJ’s approach and the Attorney General’s review process will not ensure access to the public documents before the rapidly approaching June 30, 2021 execution.

History and Constitutional Significance of the Media’s Presence at Executions

The First Amendment guarantees the public and the press the right to witness certain government proceedings—including executions. It exists to enable and protect “uninhibited, robust, and wideopen [sic]” debate on public issues, *Watts v. United States*, 394 U.S. 705, 708 (1969), and “for the bringing about of political and social changes desired by the people,” *Roth v. United States*, 354 U.S. 476, 484 (1957). Neither is possible without public access to government proceedings, particularly when it comes to the criminal system—a principle the Supreme Court recognized almost forty years ago when it held that “the right to attend criminal trials is implicit in the guarantees of the First Amendment.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 556, 576 (1980) (quoting *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972)).

That right of access does not end at the trial. Rather, it extends to places and processes that “have historically been open to the press and general public” and where “public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enterprise Co. v. Superior Court of California (Press Enterp. II)*, 478 U.S. 1, 8 (1986). Government executions, including those in Texas, satisfy this two-part test. See *First Amend. Coal. of Arizona, Inc. v. Ryan*, 938 F.3d 1069, 1075 (9th Cir. 2019) (“[T]he public has a First Amendment right to view executions in their entirety.”).

Historically, executions in America were open and public. And, as noted above, media witnesses have appeared present at each of Texas’ prior 570 executions since 1982. As for logic, media access to executions is necessary “so that the public can determine whether lethal injections are fairly and humanely administered.” *Id.* at 1076.

“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Id.* at 572. Public access “enhances the quality and safeguards the integrity” of government processes, “heighten[s] public respect” for them, and “permits the public to participate in and serve as a check upon the [government] process.” *Globe Newspaper*, 457 U.S. at 606. In other words, such access gives the public confidence that the procedures are being carried out properly, and that the State has nothing to hide. As the Supreme Court has explained, “the criminal justice system exists in a larger context of a government ultimately of the people, who wish to be informed about happenings in the criminal justice system, and, if sufficiently informed about those happenings, might wish to make changes in the system.” *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1070 (1991). This is essential to our system of self-government. And the need for public oversight is strongest where the state wields its greatest power to affect individual liberty—including when it exerts its power to end a human life.

The benefits of media access to government executions are not merely hypothetical. Without media access to executions, the public has no way to assess the propriety and lawfulness of the death penalty, or to otherwise exercise oversight over this critical stage of the criminal process. The media has repeatedly played a critical role in documenting botched executions and serious failures in the execution

process in Texas that might otherwise go undocumented.⁴ Without the presence of reporters, the public would never have known that Mr. May in 1992 “went into coughing spasms, groaned, gasped, lifted his head from the death chamber gurney and would have arched his back if he had not been belted down”⁵ or that Mr. Woolls in 1986 had to assist with his own execution by “help[ing] technicians find veins.”⁶ Due to TDCJ’s failures, the public will never have a media account of the execution of Mr. Jones last month.

Impacts of Staffing Shortages on the Executions

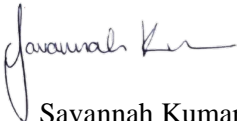
The protocol breach and the lack of public accounting is additionally concerning in light of TDCJ spokespersons’ reference to new and untrained staff. TDCJ overall has been experiencing “dangerous, chronic understaffing” with several prisons staffed 50% or more below the required numbers.⁷ The public has a right to know how these staffing shortages have impacted TDCJ’s ability to carry out executions and whether the staff are adequately trained and prepared for the complex legal requirements involved in executions.

The Need for a Stay

Given the failures that prevented media witnesses from attending the execution of Quintin Jones in violation of the Texas Administrative Code, the upcoming execution of Mr. John Hummel cannot go forward as planned. With just six days until his execution and no public statement from TDCJ about the outcome of any internal investigation regarding the mistakes that occurred during Mr. Jones’s execution, going forward with another execution would be both irresponsible and cruel.

A thirty day stay on the execution of Mr. John Hummel would give TDCJ additional time to ensure adequate measures are in place to prevent critical errors at Mr. Hummel’s execution, provide the public with an account of the reasons for the errors at Mr. Jones’s execution, and make public the plan to prevent such errors going forward.

Sincerely,



Savannah Kumar

Adriana Piñon

ACLU of Texas

Cassandra Stubbs

Cassandra Stubbs

**ACLU Capital Punishment
Project**

/s Vera Eidelman

Vera Eidelman

**ACLU Speech, Privacy &
Technology Project**

⁴ For example, the executions of the following five people were botched or demonstrated serious failures: Claude Jones (2000), Joseph Cannon (1998), Genaro Ruiz Camacho (1998), Justin May (1992), Randy Woolls (1986).

⁵ Michael Graczyk, *Convicted Killer Gets Lethal Injection*, DENISON HERALD, May 8, 1992; Robert Wernsman, *Convicted Killer May Dies*, HUNTSVILLE ITEM, May 7, 1992 (documenting that Mr. May “gasped, coughed, and reared against his heavy leather restraints, coughing once again before his body froze”).

⁶ Michael Graczyk, *Addict Executed for Murder of Ticket-Taker*, AP News (Aug. 20, 1986), <https://apnews.com/article/332199ef1aabad366a5ee4d90483427e>.

⁷ Jolie McCullough, *Texas to Shutter Three More Prisons As Units Face Critical Staffing Shortages*, TEXAS TRIBUNE, (Dec. 1, 2020, 4 PM), <https://www.texastribune.org/2020/12/01/texas-prisons-close-understaffing/>.

EXHIBIT A



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Texas

June 4, 2021

Bryan Collier, Executive Director, TDCJ

TDCJ Public Information Request

PO Box 4017

Huntsville, TX 77342

PIA@tdcj.texas.gov

Re: Texas Public Information Act Request

Dear Director Collier,

We submit this Public Information Act Request to seek information regarding the lack of media witnesses at the execution of Quintin Philippe Jones on May 19, 2021 at the Huntsville Unit of TDCJ.

This letter constitutes a request pursuant to the Texas Public Information Act (“TPIA”), Texas Government Code Ch. 552. This request is made for public and non-commercial purposes by the American Civil Liberties Union of Texas (“ACLU of Texas”).¹ We request the following information maintained by the Texas Department of Criminal Justice (“TDCJ”):

1. Any and all information² regarding policies, practices, and procedures related to media access to executions conducted in TDCJ facilities.
2. Redacted information concerning staff involved in media access to the execution of Quintin Jones. This information should not include the names or personal information of individuals involved in arranging media access to the execution, but should contain: the individuals’ job title, the dates they received execution-related trainings, and whether they had previously participated in an execution at a TDCJ facility.

¹ The ACLU of Texas, a 501(c)(3) organization, is dedicated to protecting and defending the individual rights and liberties guaranteed by the Constitution and laws. The ACLU of Texas monitors government conduct, provides free legal representation in civil rights and civil liberties cases, educates the public about their rights and liberties and abuses of power, and provides analyses to the public of government activities and their civil rights implications.

² The term “information” as used in this request includes all records or communications in written or electronic form, including but not limited to correspondence, circulars, directives, documents, data, emails, faxes, logs, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, policies, procedures, protocols, reports, rules, training manuals, other manuals, or studies.

3. Any and all training and resource materials provided to individuals involved in planning or supervising media access to the execution of Quintin Jones, including, but not limited, to the following personnel:
 - a. personnel responsible for alerting media witnesses about the timing of the execution;
 - b. personnel responsible for escorting media witnesses to the appropriate witness rooms;
 - c. the Huntsville Unit Warden and/or Warden's designee;
 - d. the Death Row Supervisor.
4. A copy of the completed Execution Packet assembled by the Death Row Unit for Quintin Jones's execution as required by the execution protocol updated April 2021.
5. A list of all media witnesses waiting to be escorted to the appropriate witness rooms on May 19, 2021 in advance of Quintin Jones's execution.
6. All communications between TDCJ and media witnesses selected to attend Quintin Jones's execution.
7. Any and all TDCJ policies, protocols, or procedures guiding the selection of three additional print media or broadcast media representatives who are chosen to serve as witnesses from a list of applicants in accordance with Tex. Admin. Code Rule §152.51(d)(7)(C).
8. Any documents containing the full list of media witness applicants maintained by the TDCJ Public Information Office as required by Tex. Admin. Code Rule §152.51(d)(7)(C).
9. All communications among TDCJ staff concerning the failure to provide media access to the Quintin Jones execution.
10. All internal and/or external investigations of TDCJ's failure to ensure media access to the Quintin Jones execution.

In the interest of open government, please be mindful of your duty to make a good-faith effort to relate these requests to any information that you hold. The next scheduled execution in Texas is set for June 30, 2021. We ask that you respond to this request within the next 7 days in light of the urgency of the matter.

The Texas Public Information Act mandates that if you are unable to produce the requested information within 10 business days of this request, you certify that fact in writing and set a date within a reasonable time when the information will be available. Should you elect to withhold or delete any information, please justify your decision by referencing specific exemptions under the Act. Under provisions of the Texas Public Information Act, we reserve the right to appeal should you determine to withhold any information sought in my request.

This request is made for public and non-commercial purposes by the American Civil Liberties Union Foundation of Texas, which is a nonprofit organization whose mission is to defend and preserve individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States. Because we request this information for the benefit of the general public, please waive the fees for this request pursuant to Tex. Gov't Code § 552.267.

To the extent possible, we request that this information be provided electronically. Materials may be sent by email to skumar@aclutx.org and apinon@aclutx.org and by fax to (713) 942-8966, or by mail to P.O. Box 8306, Houston, Texas, 77288.

Please do not hesitate to contact us by email at skumar@aclutx.org and apinon@aclutx.org if you need any clarification or have any questions or concerns. Thank you for your assistance in this matter.

Sincerely,

/s/ Savannah Kumar

Savannah Kumar
Adriana Piñon
ACLU Foundation of Texas
P.O. Box 8306
Houston, TX 77288
(713) 942-8146
skumar@aclutx.org
apinon@aclutx.org

EXHIBIT B



Texas Department of Criminal Justice

Bryan Collier
Executive Director

June 16, 2021

Honorable Ken Paxton
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, TX 78711-2548

RE: Public Information Request Submitted by Savannah Kumar – OGC#AL0148

Dear Mr. Attorney General:

On June 4, 2021, the Texas Department of Criminal Justice (TDCJ) received a request under Chapter 552 of the Texas Government Code, the *Public Information Act* (PIA) from Savannah Kumar. A copy of the request and the notification letter sent to the requester is attached as *Attachment A*.

The TDCJ asserts documents responsive to this request contain information that is excepted from disclosure under the PIA. Specifically, the TDCJ invokes all of the exceptions provided by, and the exceptions incorporated into, Texas Government Code sections 552.028 and 552.101 through 552.158 of the PIA. Accordingly, we request a decision as to whether the exceptions apply.

To assist in your review, the TDCJ will provide written comments and the responsive documents, or a representative sample of the responsive documents, no later than the 15th business day from the date the request was received.

If additional information is needed, please contact this office at 936-437-6700 or via email at ogcopenrecords@tdcj.texas.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erik Brown".

Erik Brown
Director of Legal Affairs

ECB/AML
Attachment

Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.

Office of the General Counsel

P.O. Box 13084 Capitol Station
Austin, Texas 78711-3084
Phone (512) 463-9899, FAX (512) 936-2159

P.O. Box 4004
Huntsville, Texas 77342-4004
Phone (936) 437-6700, FAX (936) 437-6994

www.tdcj.texas.gov

EXHIBIT C



Texas Department of Criminal Justice

Bryan Collier
Executive Director

June 23, 2021

Honorable Ken Paxton
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, TX 78711-2548

RE: Public Information Request Submitted by Savannah Kumar – OGC#AL0148

Dear Mr. Attorney General:

I. BACKGROUND

On June 4, 2021, the Texas Department of Criminal Justice (TDCJ) received from Savannah Kumar a request for information regarding the lack of media witnesses at the execution of Quintin Philippe Jones on 05/19/21 at the Huntsville Unit of TDCJ.

The TDCJ submitted to your office a request for decision and a copy of the request on June 16, 2021, asserting the responsive records contain information excepted from disclosure under the Public Information Act (PIA).

Attached for your review and ruling are the responsive records and the TDCJ's assertion that the information is confidential under sections 552.101, 552.103, 552.108, 552.1081, 552.111, 552.136, 552.137, 552.152 of the Government Code. Accordingly, the TDCJ withdraws the assertion to all other exceptions previously raised.

Because the responsive records are voluminous and repetitive, some of the submitted information is a representative sample, as provided by section 552.301(e)(1)(D) of the Government Code.

II. SECTION 552.101. EXCEPTION: CONFIDENTIAL BY LAW

Section 552.101 of the Government Code provides as follows:

Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision.". This section also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.

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Due to the confidential nature, additional comments pertaining to the foregoing exception are set out in the confidential portion of our brief, as provided by section 552.301(e-1) of the Government Code. *See Attachment A.*

III. SECTION 552.103. EXCEPTION: LITIGATION OR SETTLEMENT NEGOTIATIONS INVOLVING THE STATE OR A POLITICAL SUBDIVISION

Section 552.103(a) of the Government Code excepts from required public disclosure:

(a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

Section 552.103(c) of the Government Code provides as follows:

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Section 552.103 was intended to prevent the use of the PIA as a means for avoiding the rules of discovery used in litigation (JM-1048, 1989). The exception enables the governmental body to protect its position in litigation by forcing parties to acquire information relating to that litigation through discovery procedures (ORD No. 551, 1990). As was noted in *Heard v. Houston Post Co.*, 684 S.W. 2d 210 (Tex. App.-Houston [1st Dist.] 1984 ref'd n.r.e.), this section of the PIA excepts information from disclosure if (1) litigation involving the governmental body is pending or reasonably anticipated and (2) the requested information relates to that litigation.

Due to the confidential nature, additional comments pertaining to the foregoing exception are set out in the confidential portion of our brief, as provided by section 552.301(e-1) of the Government Code. *See Attachment A.*

IV. SECTION 552.108. EXCEPTION: CERTAIN LAW ENFORCEMENT, CORRECTIONS, AND PROSECUTORIAL INFORMATION

Section 552.108 of the Government Code provides in relevant part:

(b) An 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 is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

The TDCJ is a law enforcement agency for purposes of section 552.108(b)(1). *See* Open Records Decision (ORD) No. 413 (1984) (interpreting predecessor statute), and *see* OR2002-2474 citing that decision. Since ORD 413 (1984), the Attorney General has agreed that information about the

minutia of prison operations that would compromise prison security is excepted from disclosure. The TDCJ believes that details about the procedural application of security policies in prison situations must be excepted from disclosure when the information might compromise the interests those security policies were created to protect.

Both the Courts and the Attorney General's Office have provided the TDCJ a great deal of deference as to what constitutes a security threat to a prison facility. In ORD 413 (1984) the Attorney General determined that the law enforcement exception, now section 552.108 of the Government Code, applied to except the release of information about the deployment of law enforcement officers, TDCJ security personnel, and barricades for a scheduled execution.

Due to the confidential nature, additional comments pertaining to the foregoing exception are set out in the confidential portion of our brief, as provided by section 552.301(e-1) of the Government Code. *See Attachment A.*

V. SECTION 552.1081. EXCEPTION: CONFIDENTIALITY OF CERTAIN INFORMATION REGARDING EXECUTION OF CONVICT

Section 552.1081 of the Government Code provides in relevant part:

Information is excepted from the requirements of Section 552.021 if it contains identifying information under Article 43.14, Code of Criminal Procedure, including that of:

- (1) any person who participates in an execution procedure, including a person who uses, supplies, or administers a substance during the execution; and

The submitted information provides specific identifying information of TDCJ employees who participate in the execution process that is confidential under section 552.1081 and therefore must be withheld.

VI. SECTION 552.111. EXCEPTION: AGENCY MEMORANDA

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency ...

Section 552.111 incorporates the deliberative process privilege into the PIA for intra-agency and interagency communications. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000). The deliberative process privilege protects from disclosure intra-agency and interagency communications consisting of advice, opinion, or recommendations on policymaking matters of the governmental body at issue. The purpose of withholding advice, opinion, or recommendations under section 552.111 is to "encourage frank and open discussion within the agency in connection with its decision-making processes" pertaining to policy matters. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App. – San Antonio 1982, writ red'd n.r.e.). An agency's policymaking functions do not encompass routine internal administrative and personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues." An agency's policymaking functions do include, however, administrative and personnel matters of broad scope that affect the governmental body's policy mission.

Due to the confidential nature, additional comments pertaining to the foregoing exception are set out in the confidential portion of our brief, as provided by section 552.301(e-1) of the Government Code. *See Attachment A.*

VII. SECTION 552.136. EXCEPTION: CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS

Section 552.136 of the Government Code provides in relevant part:

(b) Notwithstanding any other provision of this chapter, 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.

The submitted information provides inmate trust fund account information that is confidential under section 552.136 and therefore must be withheld.

VIII. SECTION 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES

Section 552.137 of the Government Code provides in relevant part:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

Section 552.137 generally states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.” However, certain exceptions apply, including those articulated in Open Records Decision 684 in 2009. “Section 552.137(a) is not applicable to an institutional e-mail address, an internet website address, or an e-mail address a governmental body provides for the use of its officials or employees.” Open Records Decision No. 684 at 10 (2009).

The submitted information contains e-mail addresses of reporters for prominent, nongovernmental media organizations who used the e-mail addresses “for the purpose of communicating...with a governmental body” and are not governmental employees. Though the e-mail addresses are available publicly on that organization’s websites, reporters are considered “members of the public,” which is generally defined as “anyone who is not part of the agency or governmental body that is referenced.” *Austin Bulldog v. Leffingwell*, 490 S.W.3d 240, 249 (Tex. App.—Austin 2016, no pet.). The TDCJ’s inclination is that the reporters’ e-mail addresses are not an “institutional e-mail address,” thus making them confidential which your office confirmed in OR2019-08202 by ruling the e-mail address of a reporter must be withheld under section 552.137. Therefore, the e-mail addresses should be withheld under section 552.137 of the Government Code.

IX. SECTION 552.152. EXCEPTION: CONFIDENTIALITY OF INFORMATION CONCERNING PUBLIC EMPLOYEE OR OFFICER PERSONAL SAFETY

Section 552.152 of the Government Code provides as follows:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Section 552.152 excepts from disclosure information "that relates to an employee or officer of the governmental body" if "disclosure of the information would subject the employee or officer to a substantial threat of physical harm." The submitted information provides specific identifying information pertaining to TDCJ employees involved in some aspect of the execution process; therefore, there is no dispute the submitted information falls within the type of information that may be protected by section 552.152. The only question would be is whether the "disclosure of the information would subject" the employees "to a substantial threat of physical harm" which the TDCJ believes it does.

Due to the confidential nature, additional comments pertaining to the foregoing exception are set out in the confidential portion of our brief, as provided by section 552.301(e-1) of the Government Code. *See Attachment A.*

X. CONCLUSION

For the foregoing reasons, in conjunction with the additional comments provided in the confidential portion of our brief, the TDCJ requests your office to rule that the submitted information is confidential under the PIA and not subject to release.

Sincerely,



Erik Brown
Director of Legal Affairs

cc: Savannah Kumar
ACLU Foundation of Texas
P.O. Box 8306
Houston, TX 77288

ECB/AML
Attachment

(Note for Administrative Purposes Only: General Brief placed in FedEx on 06/23/21 and assigned Tracking# 774043645565)

The TDCJ requests that you send your ruling to:

Texas Department of Criminal Justice
Office of the General Counsel
ATTN: Erik Brown, Director of Legal Affairs
P.O. Box 4004
Huntsville, Texas 77342-4004