



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 21, 1990

Mr. J. Kirk Brown
General Counsel
Texas Department of
Criminal Justice
P.O. Box 99
Huntsville, Texas 77340

Open Records Decision No. 560

Re: Whether videotapes of
"forced cell transfers" are
available to the public under
the Open Records Act, article
6252-17a, V.T.C.S. (RQ-1875)

Dear Mr. Brown:

As part of the court ordered prison reforms resulting from a lawsuit filed against the Texas prison system, Ruiz v. Estelle, 503 F.Supp. 1265 (S.D. Tex. 1980), aff'd in part and vacated in part, 679 F.2d 1115 (5th Cir.), amended in part, 688 F.2d 266 (5th Cir.), cert. denied, 460 U.S. 1042 (1982), the then Texas Department of Corrections (now the Texas Department of Criminal Justice, Institutional Division, hereinafter the "department") was required to adopt a formal control and reporting system for episodes of prison employees' use of force on inmates. You explain that the resulting Use of Force Plan requires

careful training for all employees who might be called upon to use physical force on an inmate, guidelines on when force was and was not appropriate, and a system for documenting episodes of use of force so that it would be possible to assure that employees who used force on inmates did so in a manner that was consistent with agency policy and the law. As part of that policy, when there is time, [the department] routinely attempts to video tape uses of force on inmates. The tapes are intrinsic parts of the use of force reporting system.

You go on to state that when an inmate "declines to cooperate" in his transfer from one cell to another, or when an inmate has demonstrated a history of unruliness, a video camera is used to record the transfer in the event that

violence occurs. These videotapes then become a part of a Use of Force Report that is shared with the Ruiz Special Master's Office, which oversees the court ordered prison reforms.

Section 7.A.(18) of the Stipulated Modification of Section II.D and Section II.A of the Amended Decree (hereinafter the Stipulated Modification) of the Ruiz Amended Decree requires the department to "promulgate and enforce rules to ensure that . . . [n]o inmate has access to sensitive information, and all sensitive materials are kept inaccessible." Section 1.G. of the Stipulated Modification provides:

A document, record, or information relating to a particular inmate is sensitive if it

(1) relates to his medical, psychiatric, or psychological condition or treatment . . .

(2) relates to his criminal history, current offense, educational attainment, intelligence quotient, trust fund account, social history, known enemies, disciplinary record, next of kin, or home address.

Otherwise it is nonsensitive.

An inmate's medical, psychiatric and psychological files, and all documents filed therein, an inmate's unit and departmental files, and all documents typically filed therein, travel cards, disciplinary reports, incident reports, use of force reports and grievances are sensitive. (Emphasis added.)

The department received two open records requests for access to and copies of videotapes, films, and audio materials detailing the transfer of prison inmates from one cell to another and from one penal institution to another. The first request asks for all such materials produced by, and in the custody of, prison officials since January 1, 1989. The second request seeks one particular videotape of a "forced cell move." You inquire whether these materials may be withheld from the public pursuant to sections 3(a)(1) or 3(a)(7) of the Texas Open Records Act, article 6252-17a,

V.T.C.S. For example, you contend that the requested videotapes are made confidential by the Stipulated Modification, bringing the tapes within the protection of section 3(a)(7) of the Open Records Act. Section 3(a)(7) of the act protects, inter alia, records "which by order of a court are prohibited from disclosure." Open Records Decision No. 415 (1984).

Although the current open records requests do not come from prison inmates, release of this type of information to the general public would mean that the department could not insure that no inmate had access to sensitive information. This office found in an informal open records letter ruling numbered OR88-012 (1988) that the contents of Use of Force Reports are made confidential by the Stipulated Modification and so come under the protection of section 3(a)(7) of the Open Records Act.

Other informal open records letter rulings from this office have concluded, however, that because the above cited sections of the Stipulated Modification were intended to promote the safety of individual inmates, it was not the court's intent to deprive an inmate of "sensitive information" that pertained solely to himself, and that such information should be released to that inmate when so requested. See, e.g., OR88-285, OR88-239 (1988).

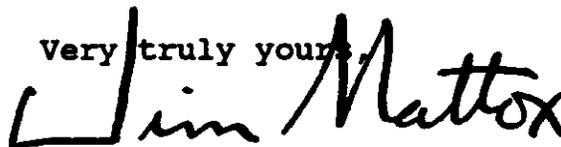
The Use of Force Reports are created and maintained pursuant to federal court order. It is not a proper function of the opinion process to attempt to determine the court's intent in the Stipulated Modification.¹ Because the Ruiz lawsuit is ongoing, the proper authority to determine access to "sensitive information" is the forum court. Attorney General Opinions JM-287 (1984); O-1847 (1940); see also Open Records Decision No. 415 (1984). All informal open record letter rulings that considered the applicability of the Open Records Act to such information are overruled.

1. Of course, parties to the litigation in doubt as to compliance with the court's orders may consult their respective legal counsel. The attorney general's duties with respect to the representation of client agencies in litigation are discrete from the opinion process.

S U M M A R Y

Use of Force Reports (including videotape recordings) held by the Texas Department of Criminal Justice are required by, and subject to, the jurisdiction of the federal court in ongoing litigation. This office will not apply the provisions of the Texas Open Records Act, V.T.C.S. art. 6252-17a, to such materials. All informal open record letter rulings that interpret the Stipulated Modification of the Ruiz Amended Decree are overruled.

Very truly yours,



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