



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 2, 1996

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR96-1065

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39960.

The Texas Department of Criminal Justice -- Institutional Division (the "department") received an open records request from an employee union representative for "all records, documents, statements and files" pertaining to the requestor's client, who was terminated for ordering the use of excessive force against an inmate. You contend that the identities and statements of all inmates named in the internal affairs investigation of the excessive use of force should be withheld from the public pursuant to sections 552.101 and 552.108 of the Government Code.

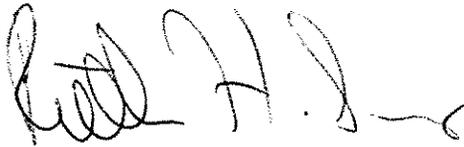
Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution."¹ Gov't Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781 (June 14, 1996), 1996 WL 325601. In light of the Supreme Court's ruling in *Holmes*, we conclude that the department may withhold the requested records in their entirety pursuant to section 552.108.

¹The Texas Department of Criminal Justice is a law enforcement agency for purposes of section 552.108. Attorney General Opinion MW-381 (1981) at 3 (interpreting predecessor statute).

Although section 552.108 authorizes the department to withhold the requested information, the department may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007(a). In this regard we note that several of the records submitted to this office consist of medical records. The department must withhold these records pursuant to section 5.08 of V.T.C.S. article 4495b.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/rho

Ref.: ID# 39960

Enclosures: Submitted documents

cc: Mr. Michael Shirk
AFSCME
815 Brazos Street, Suite 500
Austin, Texas 78701
(w/o enclosures)