



January 12, 2000

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-0114

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131071.

The Texas Department of Criminal Justice (“TDCJ”) received a request for records regarding an internal affairs investigation stemming from an inmate’s complaint of excessive force used by TDCJ guards. You claim that the requested information is excepted from disclosure under section 552.131, and alternatively under section 552.107, of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body, “must ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.” Gov’t Code § 552.301(b). Moreover, “no later than the 15th business day after the date of receiving the written request,” the governmental body must submit to the attorney general “written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld” and “a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested” Gov’t Code § 552.301(e)(1)(A), (D). Otherwise, the requested information “is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302.

In this case, you state that TDCJ received the request for information on September 29, 1999. Accordingly, you were required to ask this office for a decision regarding the request by October 13, 1999. Furthermore, you were required to send this office your arguments for

withholding the information as well as a copy of the requested information no later than October 20, 1999. However, we did not receive your request for a decision until November 5, 1999, your arguments for withholding the information until December 3, 1999, and a copy of the requested records until December 8, 1999. Therefore, absent a compelling reason to withhold the information, the requested records must be released. We find that at least portions of the documents at issue concern the interests of third parties; therefore a compelling reason exists to withhold at least these portions of the requested records.¹ *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Section 552.131(a) relating to TDCJ inmates states:

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.029 states:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice 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.

Section 552.131 is explicitly made subject to section 552.029. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure. The requested documents pertain to an incident involving the use of force against a TDCJ inmate. Accordingly, while TDCJ must generally withhold the submitted information under section 552.131, it must release basic information regarding this incident pursuant to section 552.029(8). Basic information includes the time and place of the incident, names of inmates and TDCJ officials directly involved, a brief narrative of the incident, a brief description

¹We note that the submitted documents contain Major Use of Force Report Number M-0497-01-99 which appears to be a completed report that would normally be public information under section 552.022(a)(1) of the Government Code. However, as that provision is subject to "other law" requiring confidentiality, portions of the report must be withheld under section 552.131 of the Government Code.

of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.²

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

²This ruling is limited to the application of sections 552.029 and 552.131. This ruling does not consider the applicability and effect of the Final Judgment in the case of *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992), to the information at issue. However, we note that *Ruiz* is still in effect and it prohibits the release of certain "sensitive information," which may include information required to be released under section 552.029. We remind you that section 552.107(2) of the Government Code requires you to withhold information that is made confidential by court order, and that section 552.352 prescribes criminal penalties for the disclosure of confidential information.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 131071

Encl: Submitted documents

cc: Mr. Edward Camara, Jr.
Attorney at Law
126 Main Plaza, Ste. 1
San Antonio, Texas 78205
(w/o enclosures)