



January 12, 2000

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

OR2000-0118

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#131037.

The Texas Department of Criminal Justice ("TDCJ") received a request for information related to an employee reclassification of the State Counsel for Offenders (formerly known as Inmate Legal Services), a part of TDCJ that provides legal services to TDCJ inmates. You state that much of the responsive information is being made available to the requestor. You claim that the remaining information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that it appears that TDCJ did not notify the requestor of its decision to seek an open records ruling from the attorney general within ten business days of receiving the written request for information. *See Gov't Code § 552.301.*¹ Section 552.301(d) states:

(d) A government body that requests an attorney general decision under Subsection (a) must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

¹TDCJ received the request for information on October 21, 1999. The request for an open records ruling received by our office is postmarked on November 4, 1999, the tenth business day following the request for information. However, the copy of the request for an open records ruling posted to the requestor is postmarked on November 5, 1999, more than ten days after the request for information was made. The requestor provided this office a copy of the envelope bearing the November 5, 1999 postmark.

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for a decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

If a governmental body fails to comply with subsection (d), the requested information is presumed public pursuant to section 552.302 of the Government Code. The relevant portion of section 552.302 provides:

If a governmental body does not . . . provide the requestor with the information required by Section 552.301(d), the information requested in writing is presumed subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

Because section 552.111 is a discretionary exception designed to protect a governmental body's interest, it is not a compelling reason to overcome the presumption of openness. Open Records Decision No. 470 at 2 (1987). Accordingly, since TDCJ did not timely notify the requestor of its 552.111 claim, we will not address TDCJ's arguments under the exception. The requested information must, therefore, be released.

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.

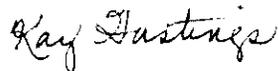
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/KSK/ljp

Ref: ID# 131037

Encl. Submitted documents

cc: Ms. Kaye Ellis Stone
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(w/o enclosures)