



January 13, 2000

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

OR2000-0137

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# 130796.

The Department of Criminal Justice (the "department") received four requests for information related to the department's imposition of employee discipline on the requestors. The Public Information Act requires a governmental body that wishes to withhold requested information to provide to this office a copy of the specific information requested, or a representative sample thereof, labeled to indicate which exceptions apply to which parts of the information, within fifteen business days of its receipt of the written request for information. Gov't Code § 552.301(e). If the governmental body does not comply with this requirement, 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. Such a compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). We note that the first of the subject requests was received by the department on October 13, 1999, and that the responsive documents were received by this office on November 8, 1999. Thus, the department failed to comply with Government Code section 552.301, and the responsive information must be released, absent a showing that the information is made confidential by other law, or a third party's interests are at issue.

You have not submitted to this office, nor claimed an exception from disclosure for, the items requested from the requestor's personnel files. We assume this information has been released. You claim that the information that you submitted as responsive to these requests is excepted from disclosure under sections 552.101, 552.107, and 552.131 of the Government Code. As section 552.131 raises the issue of confidentiality, your arguments under this section will be addressed. Section 552.131(a), relating to TDCJ inmates, provides:

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 of the Government Code provides:

Notwithstanding Section 508.313 or 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 552.029:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor;  
or
- (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.

We have marked the submitted information to indicate the documents which are subject to Government Code sections 552.029 and 552.131. The information in these documents that is in a category delineated by section 552.029 is not excepted from disclosure by section 552.131; the remainder of the information in the marked documents must be withheld under section 552.131.<sup>1</sup>

The remaining documents are not subject to section 552.131 and must be released. However, information about an employee of the Texas Department of Criminal Justice is excepted from public disclosure if the information relates to the home address, home telephone number, or social security number of that employee or reveals whether the employee has family members. Gov't Code § 552.117(3). This information must be withheld. The rest of the information in these documents must 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

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<sup>1</sup>This 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. The rest of the information in these documents must be released.

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).

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,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/nc

Ref: ID# 130796

Encl. Submitted documents

cc: CO III Ronald Gastineau  
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