



February 7, 2000

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

OR2000-0459

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# 131931.

The Texas Department of Criminal Justice (the "department") received two requests from the same requestor, for the following information:

1. Any and all insurance liability policies covering the Bartlett State Jail;
2. Any and all regulations regarding the management of a TDCJ facility;
3. Information, including videotapes, audiotapes and/or any and all surveillance equipment in use at the Bartlett State Jail;
4. Any and all contracts for the housing of inmates at the Barlett State Jail;
5. With respect to the death of Daniel Milton Simons, Jr., any and all police reports, internal memoranda, correspondence (including any to or from the Corrections Corporation of America and to or from any potential defendants or their attorneys), offense reports, autopsy reports, witness statements, and internal affairs reports and findings. [This item encompasses the information requested in items 5 through 13 of the November 22 request and all of the November 23 request.]

You state that you are providing item 4, the material regarding the contracts for housing of inmates. You also state that the insurance liability policies requested in item 1 are identical to those which this office authorized you to withhold in a prior ruling, Open Records Letter No. 98-2341(1998). You claim that the regulations and surveillance equipment information

requested in items 2 and 3 are excepted from disclosure under sections 552.108 and 552.110 of the Government Code. You claim that the remaining information is excepted from disclosure under sections 552.107, 552.108, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that a governmental body is not required to seek a determination from this office regarding the disclosure of information if the governmental body has previously requested and received a determination from this office concerning precisely the same information. Gov't Code § 552.301(a). If the information responsive to requested item 1 is identical to information this office previously found to be excepted from required disclosure in Open Records Letter No. 98-2341(1998), it remains excepted from required disclosure and may be withheld, provided that there have been no substantive changes in circumstances or law that would require us to reexamine those documents. In particular, we note that a governmental body's insurance policies would be subject to section 552.022(a)(3) of the Government Code, as amended in 1999, and would generally be required to be released, while the contractor's insurance policies at issue here are not subject to section 552.022(a)(3).

You submitted two briefs, one relating to items 2 and 3 of the request, and the other relating to the remaining requested information about the murdered inmate. We will first address items 2 and 3. In relation to this information, you refer to the volume of information requested and the volume of information you seek to withhold. The Public Information Act addresses a governmental body's duties when requesting a decision from this office and provides a mechanism for handling requests for large amounts of information. Section 552.301(e) provides that:

A governmental body that requests an attorney general decision . . . must within a reasonable time but not later than the 15<sup>th</sup> business day after the date of receiving the written request:

(1) submit to the attorney general:

. . .

(D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]

You did not provide this office with the specific information requested or representative samples of the information responsive to items 2 or 3, as required by section 552.301(e)(1)(D) of the Government Code. Section 552.302 provides that if a governmental body fails to submit the materials required by section 552.301, the requested information must be released unless there is a compelling reason to withhold the information. You argue that section 552.108 excepts the requested information from required disclosure, but section

552.108 does not provide a compelling reason for withholding the requested information in this case. *See, e.g.* Open Records Decision Nos. 473 (1987). Thus, the department may not withhold the information from disclosure under section 552.108.

Section 552.110 may provide a compelling reason for withholding information covered by that section. *See* Open Records Decision Nos. 552 (1990), 150 (1977) (compelling reason for withholding may be shown by demonstration that information is made confidential by another source of law or affects third party interests). You have not submitted the information to us. Nor have you persuaded us that the information constitutes a trade secret. *See* RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret); 542 at 3 (1990); 402 (1983). Therefore, the department may not withhold information responsive to request items 2 and 3 under section 552.110 as a trade secret. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). The department must release the information requested under items 2 and 3.

We now consider your second brief regarding information specific to the death of an inmate. Section 552.131 of the Government Code, as added by Acts 1999, 76<sup>th</sup> Leg., ch. 783, §1, excepts from disclosure information obtained or maintained by the department which relates to an inmate who is confined in a facility operated by or under contract with the department. We note, however, that basic information regarding the death of an inmate in custody must be released in accordance with section 552.029(8) of the Government Code. Basic information, we believe, includes the time and place of the incident, names of inmates and department officials directly involved in the incident, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Therefore, except as noted above, the department must withhold from disclosure under section 552.131 the information requested under item 5. As section 552.131 is dispositive, we do not address the additional exceptions to disclosure you assert.<sup>1</sup>

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

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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.

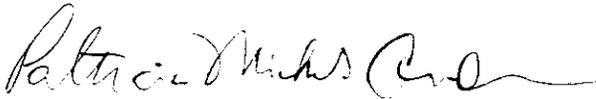
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). 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).

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,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/ljp

Ref: ID# 131931

Encl. Submitted documents

cc: Mr. Geoffrey A. Berg  
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(w/o enclosures)