



March 1, 2000

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
Post Office Box 4004
Huntsville, Texas 77342

OR2000-0817

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 133433.

The Texas Department of Criminal Justice (the “department”) received an open records request from one of its employees for

all documents, statements and files pertaining to my personal disciplinary history while employed with TDCJ-ID. I am also requesting a copy of all documents pertaining to me to include all internal affairs, shift files, and administrative investigations.

You have submitted to this office as responsive to the request records from a pending internal affairs investigation. You also state that five “Use of Force Reports,” two of which you have submitted to this office for review, come within the ambit of the request. You contend that the records at issue are excepted from required public disclosure pursuant to, *inter alia*, section 552.131 of the Government Code.¹

¹Because we resolve your request under section 552.131, we need not address the applicability of the other exceptions you raised.

Section 552.131(a), relating to inmates of the department, provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] 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 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 [:]

...

(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. [Emphasis added.]

Section 552.131 is explicitly made subject to section 552.029. Under section 552.029, "basic information" regarding an incident involving the use of force is subject to required disclosure. Accordingly, with regard to the Use of Force Reports at issue, the department must release basic information regarding the use of force. Basic information includes the time and place of the incident, names of the inmate and department officials directly involved, 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. All remaining information in the Use of Force Reports must be withheld pursuant to section 552.131.²

²You do not advise this office that the submitted information consists of representative samples. See Gov't Code § 552.301(e)(1)(D) (if a voluminous amount of information is requested, the governmental body in requesting a ruling from this office may submit to this office representative samples of the responsive information). See also Open Records Decision Nos. 499(1988), 497 (1988). Nevertheless, because you state that the information not provided for our review consists of three "Use of Force Reports," and because you have provided for our review two such reports, we assume the submitted reports comprise representative samples of the requested information. In the future, if you are submitting representative samples of the responsive information, you should so advise this office.

The records you have submitted from the internal affairs investigation consist of information about prison inmates. After reviewing these records, we conclude that they must be withheld in their entirety pursuant to section 552.131 of the Government Code.

In summary, the department must release all "basic information" from each of the Use of Force Reports. The remaining information in those reports, as well as the submitted information pertaining to the internal affairs investigation, must be withheld pursuant to section 552.131 of the Government Code.³

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).

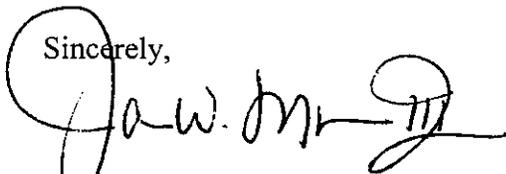
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

³This 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 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,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/RWP/ch

Ref: ID# 133433

bcc: Ms. Undrea Tatman
2250 West Virginia, Apt. #88
Beaumont, Texas 77705
(w/o enclosures)