



April 11, 2000

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2000-1429

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133959.

The Department of Criminal Justice (the "department") received a request for the following information related to an alleged assault on an inmate by another inmate:

1. A copy of the audiotape of the disciplinary hearing
2. The housing list for the area of the assault, along with the list of inmates interviewed
3. All unit records from your unit including all photos of the weapon, crime scene, victim and suspects, and witnesses statements from all the inmates and guards who made them

You claim that the requested information is excepted from disclosure under sections 552.107, 552.108, and 552.131 of the Government Code. You also note that the request is made by an attorney representing an inmate, and therefore is subject to Government Code section 552.028. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.028 of the Government Code reads in pertinent part as follows:

- (a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
 - (2) an agent of that individual, other than that individual's attorney *when the attorney is requesting information that is subject to disclosure under this chapter.*
- (b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1) or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028 (emphasis added).

This statute provides that a governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility or an agent of that individual, other than that individual's attorney *when the attorney is requesting information that is subject to disclosure under this chapter.* We conclude that requests under the Public Information Act made by the attorneys of inmates have the same effect as requests made by members of the public in general. Requests from attorneys of inmates trigger the application of the Act. *See* Gov't Code §§ 552.006, .021, .301. We find that section 552.008 merely codifies that a written request from an inmate's attorney is considered a proper request under the Act to which a governmental body must comply. This section neither prohibits nor requires release of information to an attorney. The remaining provisions of the Act govern release to these requestors.

The release of information "about an inmate" in response to requests made under the Public Information Act is controlled by sections 552.029 and 552.131 of the Government Code. Section 552.131(a) 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, in pertinent part, 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 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*. [Emphasis added.]

Section 552.131 is explicitly made subject to section 552.029. You relate that the requested information relates to an alleged assault committed by an inmate. Under section 552.029, “basic information” regarding an alleged crime involving an inmate is subject to required disclosure. We consider “basic information” to have the same meaning here as it does in Government Code section 552.108(a), *i.e.* to be analogous to “front page” information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We listed this information in Open Records Decision No. 127 (1976). This information must be released in response to requests made under the Public Information Act. Remaining information “about an inmate,” requested under the Public Information Act is excepted from disclosure by section 552.131. As the requested information does not appear to be “basic information” about this alleged crime, it is excepted from required disclosure.

You raise section 552.107(1) in conjunction with *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff’d in part and vacated in part*, 679 F.2d 1115 (5th Cir.), *amended in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). The *Ruiz* decision restricted the dissemination of “sensitive information” regarding prison inmates. The *Ruiz* final judgement, entered December 11, 1992, gave the Board of Criminal Justice authority to define “sensitive information.” This Board met on January 21, 2000, and decided:

The term 'Sensitive Information' shall include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to Section 552.029, Government Code.

Thus, information in the categories delineated in section 552.029 of the Government Code are not “sensitive” information subject to *Ruiz*.

You relate that it has been the historical practice of TDCJ to allow inmates to review certain information in preparation for “major disciplinary hearings” and to make certain information available to attorneys who represent inmates in such hearings. This decision does not address the rights of access to this information under principles of due process.

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.

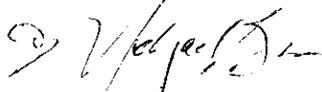
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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).

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# 133959

Encl Submitted documents

cc: Ms. Shannon Tigner
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Angleton, Texas 77515
(w/o enclosures)