



May 1, 2000

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

OR2000-1676

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# 134661.

The Texas Department of Criminal Justice (the "TDCJ") received a request for a copy of any "written audio and video" reflecting the allegations that the requestor traded illegal drugs with an offender. You assert that you are providing the requestor his written statement and video interview. You claim that the remaining portions of the requested information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that section 552.108(a) excepts the submitted information from disclosure. Section 552.108, the "law enforcement exception," provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication . . .

This office has determined that TDCJ is a law enforcement agency. *See* Open Records Decision No. 413 (1984). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a), (b), .301; *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested information relates to an investigation undertaken by unit staff about criminal conduct, including violations of Penal Code sections 36.02 and 38.11. Further, you assert that release of the requested information would interfere with the investigation. Because the submitted information relates to a criminal investigation, we conclude that the release of the information would interfere with the detection, investigation, and prosecution of crime. Gov't Code § 552.108(a)(1); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied)(section 552.108 only applies to criminal investigations); Open Records Decision No. 474 (1987) (where incident is still under active investigation, section 552.108 may be invoked by any proper custodian of information which relates to incident). Therefore, TDCJ may withhold the submitted information under section 552.108(a)(1).¹ You have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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

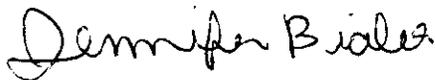
¹Having found the information excepted from disclosure under section 552.108, we need not address the applicability of section 552.101.

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/nc

Ref: ID# 134661

Encl. Submitted documents

cc: Mr. Lavardrick Satterwhite
110 Sowescor Street
Crockett, Texas 75835
(w/o enclosures)