



May 8, 2000

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

OR2000-1775

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# 135008.

The Texas Department of Corrections (the “department”) received a request for information a particular use of force report as well as the statements Officer Faulk and the offenders gave concerning the incident. You claim that the requested information is excepted from disclosure under sections 552.107(2), 552.108, and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.<sup>1</sup>

Section 552.131 of the Government Code 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 an incident involving the use of force must be released in accordance with section 552.029(a)(8) of the Government Code. This office has determined that basic information 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 the requested information from disclosure under section 552.131.

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<sup>1</sup>You have submitted a copy of the Internal Affairs Division Report of Investigation related to the alleged use of force incident. We believe the requestor seeks only the department’s use of force report and witness statements contained therein. Therefore, we do not address the applicability of the claimed exceptions to the internal affairs investigative report.

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 (5<sup>th</sup> Cir.), *amended in part*, 688 F.2d 266 (5<sup>th</sup> Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). The *Ruiz* decision restricted the dissemination of "sensitive information" regarding prison inmates. The *Ruiz* final judgment, 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 is not "sensitive" information subject to *Ruiz*. Consequently, the *Ruiz* order does not conflict with our conclusion that the department must release to the requestor information subject to section 552.029(a)(8).

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,



Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/ljp

Ref: ID# 135008

Encl. Submitted documents

cc: Mr. Henry Hukill  
Route 1, Box 556  
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(w/o enclosures)