



May 8, 2000

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

OR2000-1776

Dear Ms. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 134966.

The Texas Department of Criminal Justice (“TDCJ”) received a request from an inmate’s attorney for numerous categories of information regarding the inmate, including “any other information contained in [TDCJ] files.” You indicate TDCJ has made available to the requestor some of the requested information.¹ You have submitted for our review additional information that is responsive to the request, consisting of documents that comprise a “Case Summary” report. You assert that this information is excepted from disclosure under sections 552.101, 552.107, and 552.131 of the Government Code.

We note at the outset that, while you acknowledge that the present requestor is an attorney representing an inmate, you also state, pursuant to Government Code section 552.028, that “a state agency is not required to respond to such requests.” 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

¹We therefore assume that TDCJ has released to the requestor any information that is responsive to the request, other than the information you have submitted for our review. This decision thus addresses only the submitted information.

(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). Pursuant to the express language of this provision, we believe that requests under the Public Information Act (the "Act") made by the attorneys of inmates have the same effect as requests made by members of the public in general. Thus, the request from the present requestor is a proper request under the Act to which TDCJ must comply. We shall accordingly address your arguments for withholding the submitted information from the requestor.²

Among other exceptions, you assert section 552.131 of the Government Code. In pertinent part, section 552.131 states:

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 [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.

...

Gov't Code § 552.131(a). We agree that section 552.131 applies to the submitted information. However, section 552.029 of the Government Code states:

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[:]

²With reference to a portion of the information that may be responsive to the present request, you state that "we believe TDCJ is not required to provide TCIC information to [the inmate or his attorney] under Government Code § 552.028. That provision provides that a state agency is not required to respond to such requests." This statement is thus framed as if section 552.028 is an exception which TDCJ may assert to this office for withholding responsive information. We note that section 552.028 is found in subchapter B of the Public Information Act (the "Act") pertaining to the right of access to public information. We also note that the exceptions which a governmental body may assert for withholding responsive information are found in subchapter C of the Act. Thus, we do not agree with your implicit suggestion that section 552.028 of the Government Code is among the exceptions for withholding information under the Act which a governmental body may assert pursuant to subchapter G of the Act.

(1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;

(2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;

(3) the offense for which the inmate was convicted or the judgment and sentence for that offense;

(4) the county and court in which the inmate was convicted;

(5) the inmate's earliest or latest possible release dates;

...

(7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor[.]

Gov't Code § 552.029. Section 552.131 is explicitly made subject to section 552.029. We have accordingly marked the specific information in the submitted documents that is not among the types of information described under section 552.029. We conclude you must withhold from the requestor the information we have marked, pursuant to section 552.131.

As to the remaining information, you also raise section 552.107 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). Section 552.107(2) states that information is excepted from required public disclosure of "a court by order has prohibited disclosure of the information." The *Ruiz* decision restricted the dissemination of "sensitive information" regarding inmates. The *Ruiz* final judgment, entered December 11, 1992, gave the Board of Criminal Justice (the "Board") authority to define the term "sensitive information." The Board met on January 21, 2000, and decided that "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 prohibited from disclosure by the *Ruiz* court order.

You also assert section 552.101 of the Government Code with reference to criminal history record information ("CHRI") of the named inmate. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Assuming *arguendo* that the CHRI of the named inmate would be excepted from disclosure to this requestor under section 552.101, we find no CHRI in the

submitted documents. You have not otherwise explained, nor is it apparent to this office, how section 552.101 excepts from required disclosure any of the information you have submitted. We thus conclude that none of the information is excepted from disclosure by section 552.101.

In summary, you must withhold from the requestor the information we have marked, pursuant to section 552.131. The remaining information is not excepted from required disclosure, and must be released.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).

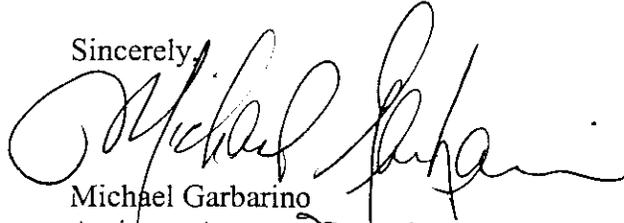
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

³We have not marked for redaction the "Sent. Begin Date" for each of the offenses listed in the submitted documents. We assume this information is the same as the "date on which the unit received the inmate," and that this information is therefore specifically made public pursuant to section 552.029(2). If this information is not the date the unit received the inmate, you must redact this information pursuant to section 552.131.

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 Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 134966

Encl. Submitted documents

cc: Mr. James W. Evans
Hill Gilstrap
1400 West Abram Street
Arlington, Texas 76013
(w/o enclosures)