



May 19, 2000

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

OR2000-1994

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# 136089.

The Texas Department of Criminal Justice (the "department") received a request for the transcript or tape for two particular inmate disciplinary hearings. You state that there are no written transcripts. You claim that the requested audiotapes are excepted from disclosure under sections 552.107 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 an attorney is not entitled to "access to information greater than that afforded the general public." 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). 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.

First, you assert that the requested information is excepted from public disclosure under section 552.131 because the information relates to an inmate who is confined in a facility operated by the department. Section 552.131(a) relating to department inmates 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 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.

Gov't Code § 552.131. Section 552.131 is explicitly made subject to section 552.029 of the Government Code. Section 552.029 provides for required public access to certain specified information about an inmate confined in a facility operated by or under a contract with the department. We find that section 552.029 does not require the disclosure of the requested information. Therefore, we conclude that, as the requested information relates to an inmate who is confined in a facility operated by the department, you must withhold the requested information under section 552.131. Because we are able to make a determination under section 552.131, we need not address your claim under section 552.107 of the Government Code.<sup>1</sup>

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.

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<sup>1</sup>The *Ruiz* decision restricted the dissemination of "sensitive information" regarding prison inmates. *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* final judgment, entered December 11, 1992, gave the Board of Criminal Justice authority to define "sensitive information." The 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 in section 552.029 of the Government Code is not "sensitive information" subject to *Ruiz*.

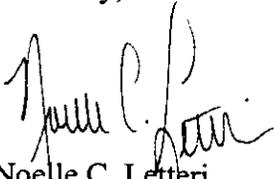
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Noelle C. Letteri  
Assistant Attorney General  
Open Records Division

ncl/nc

Ref: ID#136089

Encl. Submitted documents

cc: Mr. Joseph Soliz  
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(w/o enclosures)