



July 17, 2000

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

OR2000-2702

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137124.

The Texas Department of Criminal Justice ("TDCJ") received a request for various documents relating to the prohibition against certain typewriters being sold to or possessed by inmates. The requestor has delineated her request into a list of fourteen items. You argue that the information requested in items six, eight, and twelve is excepted from public disclosure pursuant to Government Code sections 552.103, 552.107, and 552.131.¹ You have submitted the responsive information for our review which you have labeled as documents 1-13. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). TDCJ must meet both prongs of this test for the information to be excepted under section 552.103(a).

¹In your brief to this office, you make no mention of the disclosure status of the documents of the remaining items of the request. However, we note that in your letter to the requestor dated May 12, 2000, you inform the requestor that in regards to items 1-5, 7, 9-10, and 13-14 either no records exist in the format requested or the requestor may contact the E&R Fund office, the Attorney General's office, or the court clerk to obtain the information.

You explain that there are two pending lawsuits concerning the subject matter of the requested information in which TDCJ inmates are suing TDCJ and others claiming various causes of action. Based on your representations and our review of the documents at issue, we find that you have sufficiently shown that litigation involving TDCJ is pending and that the majority of the documents pertain to the pending litigation. Therefore, we conclude that document nos. 1-9 and 11-13 may be withheld pursuant to section 552.103(a).

We note that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information and such information must be disclosed. *See* Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

We note that an opposing party has had prior access to document no. 10; as such, no section 552.103(a) interest exists. Therefore, we will consider your section 552.131 claim in regards to this document Section 552.131(a), which relates to TDCJ inmates, provides as follows:

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 552.131 is explicitly made subject to section 552.029. 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. The document you have labeled as no. 10 is information excepted from disclosure under section 552.131. In this instance, section 552.029 does not require the disclosure of the requested information. Therefore, you may withhold document no. 10 pursuant to section 552.131.

This letter ruling is limited to the particular records at issue in this request and 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.

²As we resolve this matter under sections 552.103, we need not address the remaining exceptions you have raised regarding this information. We caution, however, that some of the information may be confidential by law or may implicate the proprietary interest of a third party. Therefore, if the department receives a request in the future, at a time when litigation is no longer reasonably anticipated or pending, the department should seek a ruling from this office on the other exceptions raised before releasing any of the requested information. *See* Gov't Code § 552.352 (distribution of confidential information may constitute criminal offense).

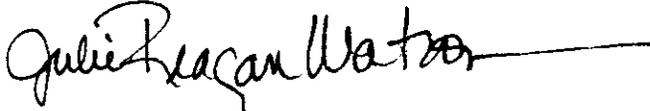
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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

A handwritten signature in black ink that reads "Julie Reagan Watson". The signature is written in a cursive style and is followed by a horizontal line.

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 137124

Encl. Submitted documents

cc: Ms. Mary F. Rugg
3220 Voss Drive
El Paso, Texas 79936-1915
(w/o enclosures)