



September 12, 2000

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

OR2000-3493

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your four requests were assigned ID#s 138800, 138801, 138802, and 139752.

The Texas Department of Criminal Justice (the “department”) received four requests for similar information. The broadest of the four requests is for:

1. Any videotape created by the TDCJ, or any agents of the same, of inmate Gary Graham, including any forced cell moves, cell extractions, or during transport from any facility within TDCJ. Please include any videotape of his transfer to the gurney in the execution room prior to his execution, and any videotape taken during said execution.
2. Any videotape created by the TDCJ, or any agents of same, of any other inmate of the TDCJ during any forced cell move, cell extraction or any other video created by the cell extraction teams of any TDCJ facility since January 1, 1998.
3. Any videotape created during any execution carried out by the TDCJ since January 1, 1998.
4. Documents detailing the forced cell move, or prison extraction of any inmate since January 1, 1998.
5. Documents detailing any internal investigation of any forced cell move, or prison extraction of any inmate since January 1, 1998.

The other three requests concern:

1. [A]ll videotapes and/or audiotapes of any movement of or other activity in relation to Gary Graham (TDCJ # 000696), made between May 4 and June 22, 2000 . . . ;
2. All videotape recordings of use-of-force actions taken by TDCJ officers against Death Row inmate Gary Graham, No. 696, on June 21 and June 22 that were necessary to remove from cells or vehicles at the Terrell Unit and the Huntsville Unit; and
3. [A]ll records—including shift reports and officers' logs—regarding the last ten days of imprisonment of the recently-executed Gary Graham, [including] . . . any officers' or TDCJ officials' reports of the execution itself.<sup>1</sup>

You state that the department does not have videotaped recordings of any execution procedures. You also state that the information that is responsive to the request for "shift reports and officers' logs" consists of "Death Watch Log' sheets" which you explain "are available to the public through the TDCJ Public Information Office," and which we therefore assume you intend to release to the appropriate requestor.<sup>2</sup> In regard to the remainder of the requested information, you claim that it is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.117, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which has been submitted as a representative sample of information at issue.<sup>3</sup>

We begin with the submitted information that pertains to Gary Graham. Section 552.107(2) of the Government Code provides that information is excepted from required public

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<sup>1</sup>Initially, this request also included "texts of any memoranda or notes of telephone conversations or correspondence with state officials during the same period." However, the requestor withdrew this particular request item.

<sup>2</sup>If you have not already released the Death Watch Log to the requestor who asked for this type of information, you must do so at this time. *See* Gov't Code §§ 552.301, .302.

<sup>3</sup>You have submitted three videotape recordings of use of force incidents involving Gary Graham, documentation of two of these incidents, and documentation regarding an additional incident involving Gary Graham. We understand this submitted information to be responsive to all four requests for information. You have also submitted one videotape recording of a use of force incident involving another inmate as well as documentation of this incident. We understand this submitted information regarding the other inmate to be a representative sample of request items 2, 4, and 5 of the first request for information quoted above. We assume that the "representative sample" of records submitted to this office is truly representative of all of the information at issue. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information from those submitted to this office.

disclosure if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). You claim that the information in question is excepted from disclosure under section 552.107(2) in conjunction with the decision of the federal court in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff’d in part and rev’d in part*, 679 F.2d 1115, *amended in part and vacated in part, reh’g denied*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). The Stipulated Modification of the Amended Decree in the *Ruiz* case restricted the dissemination of “sensitive information” regarding inmates. See Open Records Decision No. 560 (1990). However, the final judgment in *Ruiz*, entered on December 11, 1992, gave the Texas Board of Criminal Justice (the “board”) authority to define the term “sensitive information.” On January 21, 2000, the board met and, acting under the authority of the final judgment in *Ruiz*, determined 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, the board has determined that information that is within one of the categories delineated in section 552.029 of the Government Code is not “sensitive information” that the department may withhold from the public under section 552.107(2) in conjunction with the *Ruiz* decision.

Section 552.029 of the Government Code provides in relevant part:

Notwithstanding Section 508.313 or 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[:]

...  
(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov’t Code § 552.029(8). Therefore, basic information about a use of force or an alleged crime involving an inmate is not excepted from disclosure under section 552.107(2) of the Government Code and must be released in accordance with section 552.029(8).

The submitted videotapes and documentation regarding Gary Graham pertain to incidents involving the use of force against a death row inmate. Therefore, under section 552.029(8), the department must release basic information about the use of force incidents that are the subjects of these submitted videotapes and documentation. Basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved,<sup>4</sup> a brief narrative of the incident,

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<sup>4</sup>We note that the department has redacted the names of employees involved from one of the submitted use of force reports. As explained above, these names must be released under section 552.029(8).

a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident.<sup>5</sup>

We find that the submitted videotapes regarding Gary Graham do not contain such basic information. Therefore, the department must withhold these submitted videotapes in their entirety under section 552.107(2) in conjunction with *Ruiz*. However, the submitted reports do contain basic information about uses of force under section 552.029(8). Therefore, while the department must withhold most of these submitted reports under section 552.107(2) in conjunction with *Ruiz*, it must release the basic information contained in the reports under section 552.029(8).

One of the requestors has submitted an argument to this office, claiming that because Gary Graham has been executed and because this requestor is not a department inmate, the final order in *Ruiz* does not or should not have application to these requested materials. As explained above, the board has the authority under *Ruiz* to define "sensitive information." Furthermore, this office has long held that section 552.107(2) (and its statutory predecessor) in conjunction with *Ruiz* prohibits the release of this type of information to the general public as well as to department inmates. *See* Open Records Decision No. 560 at 2 (1990). Therefore, section 552.107(2) in conjunction with *Ruiz* prohibits the release of the submitted information pertaining to Gary Graham, except for the basic information regarding uses of force which must be released under section 552.029(8) as explained above.

We turn now to the remaining submitted information: the videotape and documentation regarding a use of force incident involving a different inmate. To the extent that this submitted information represents similar information involving inmates sentenced to death, the information is subject to the analysis explained above. However, to the extent that this submitted information represents similar information involving inmates not sentenced to death, such information invokes section 552.131 of the Government Code. Section 552.131 relating to department inmates states in relevant part:

(a) 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.

(b) Subsection (a) does not apply to:

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<sup>5</sup>We note that the basic information that is subject to public disclosure under section 552.029 corresponds to the basic "front-page" offense and arrest report information that must be released to the public in accordance with section 552.108. *See* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 at 3-4 (1976).

- (1) statistical or other aggregated information relating to inmates confined in one or more facilities operated by or under a contract with the department; or
- (2) information about an inmate sentenced to death.

Section 552.131 is explicitly made subject to section 552.029. As explained above, section 552.029 requires the public disclosure of basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force. The submitted materials in question pertain to an incident involving the use of force against a department inmate. To the extent this information pertains to and represents use of force incidents involving inmates not sentenced to death, the department must generally withhold this submitted information under section 552.131. However, the department must release basic information regarding this incident pursuant to section 552.029(8). We find that this submitted videotape does not contain basic information and must therefore be withheld in its entirety under section 552.131. However, the corresponding report does contain basic information about a use of force under section 552.029(8). Therefore, while the department must withhold most of this submitted report under section 552.131, it must release the basic information contained in the report under section 552.029(8).

In conclusion, the department must withhold the submitted videotapes regarding Gary Graham under section 552.107(2) in conjunction with *Ruiz*. Also under section 552.107(2) in conjunction with *Ruiz*, the department must withhold most of the submitted documentation regarding Gary Graham. However, the department must release the basic information about the uses of force reported in these documents under section 552.029. In regard to the requested information regarding other department inmates, the department must withhold the requested videotapes under section 552.107(2) in conjunction with *Ruiz* for videotapes that concern death row inmates, and under section 552.131 for videotapes that concern inmates who were not sentenced to death. As to the requested documentation regarding other inmates, the department must generally withhold use of force reports under section 552.107(2) in conjunction with *Ruiz* and under section 552.131 as explained above, however, the department must release basic information regarding the uses of force under section 552.029.<sup>6</sup>

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.*

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<sup>6</sup>Because sections 552.029, 552.107, 552.131 are dispositive of this matter, we do not address your other arguments except to note that social security numbers of department employees are not "basic information" under section 552.029.

§ 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497

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\er

Ref: ID#s 138800, 138801, 138802, and 139752

Encl: Submitted documents and videos

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