



September 18, 2000

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

OR2000-3581

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# 139109.

The Texas Department of Criminal Justice (the "department") received a written request for "the evidence" used in an inmate disciplinary action. You state that the department has released to the requestor the disciplinary report, the disciplinary hearing record, and the Step 1 inmate grievance. You contend that the remaining information pertaining to the disciplinary action is excepted from disclosure pursuant to sections 552.101, 552.107, and 552.131 of the Government Code.

The department received the records request on June 27, 2000. You requested a decision from this office on July 13, 2000. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381.

On the other hand, a demonstration that information comes under the protection of an exception to disclosure intended to protect the privacy interests of an individual constitutes a compelling reason for non-disclosure. See Open Records Decision No. 150 (1977). We

believe that section 552.131 of the Government Code is such an exception. Section 552.131(a), relating to inmates of the department, provides:

Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], 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.

Section 552.131 is explicitly made subject to section 552.029. Based on your representations that the department has previously released section 552.029 information to the requestor, we conclude that the department need not release any additional information and in fact must withhold all remaining information in the submitted documents pursuant to section 552.131.<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.

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).

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<sup>1</sup>Because we resolve your request under section 552.131, we need not address your other arguments for withholding these records.

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,



Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/RWP/ljp

Ref: ID# 139109

Encl. Submitted documents

cc: Mr. Abel Cavada  
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(w/o enclosures)