



September 28, 2000

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

OR2000-3755

Dear Mr. Peck:

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# 139509.

The Texas Department of Criminal Justice (the "department") received a request for witness statements relating to a particular grievance filed by an inmate. By letter to this office, the requestor indicates that she seeks only statements written by department employees, not those obtained from inmates. *See* Gov't Code § 552.304 (public may submit written comments to attorney general). You claim that the information is excepted from disclosure under sections 552.101, 552.107(2), and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You admit that the department failed to timely seek a ruling from this office. The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. Gov't Code § 552.301(e). The time limitations found in section 552.301 are express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that the information is made confidential by another source of law or affects third party interests).

The department provided this office with a statement indicating that the request for public information was received by the department on or about May 5, 2000. You did not seek a decision from this office until July 26, 2000. Consequently, you have not met your statutory burden. Gov't Code § 552.301. The requested information is therefore presumed public. However, you assert that the requested information is excepted from required disclosure pursuant to, among other things, section 552.131 of the Government Code. The applicability of section 552.131 to the submitted information provides a compelling reason which will overcome the presumption that the information is open. Therefore, we will address your arguments under this exception.

Section 552.131(a) relating to department inmates states in pertinent 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:

- (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.

We find that the submitted information is about an inmate who is confined in a facility operated by the department. Moreover, subsection (b) of section 552.131 does not apply to the submitted information. Finally, section 552.029 does not apply to the submitted information.¹ Therefore, the department must withhold the information under section 552.131. Because section 552.131 is dispositive, we do not address your other claimed exceptions.

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

¹Section 552.029 lists eight specific types of information about a department inmate that must be released. In this instance, section 552.029 is not triggered due to the nature of the request and the content of the responsive information.

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).

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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 139509

Encl: Submitted documents

cc: Ms. Esther Coronado
718 Duke Street
Navasota, Texas 77868-2244
(w/o enclosures)