



October 24, 2000

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

OR2000-4129

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# 140448.

The Texas Department of Criminal Justice (the "department") received two requests for information regarding internal affairs investigations of a named employee. You claim that the requested information 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.

You have identified three sets of responsive documents, which you submit as Exhibits 1, 2, and 3. As to Exhibits 1 and 2, you assert that they are excepted from required disclosure under sections 552.108 and 552.131 of the Government Code. Exhibit 1 is an investigation into an allegation of crime involving an inmate. Exhibit 2 is a Major Use of Force Report. Section 552.131 which relates 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.

Exhibits 1 and 2 consist of information about inmates confined in a facility operated by the department. Section 552.029 states:

Notwithstanding . . . Section 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 under Section 552.021:

....

(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.

Section 552.131 is explicitly made subject to section 552.029. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure. Exhibit 1 pertains to an alleged crime involving an inmate, and Exhibit 2 pertains to an incident involving the use of force against a department inmate. Accordingly, while the department must generally withhold Exhibits 1 and 2 under section 552.131, it must release basic information regarding these incidents pursuant to section 552.029(8). Basic information includes *the time and place of the incident, names of inmates* and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.

You also assert that section 552.131 excepts portions of Exhibit 3 from required disclosure. Exhibit 3 does contain "information about an inmate," so is subject to section 552.131. In addition, Exhibit 3 does not contain any information required to be released under section 552.029. Therefore, you must redact inmate-identifying information from Exhibit 3 under section 552.131.

You also assert section 552.117 of the Government Code as to Exhibit 3. You state that "most of the material in the investigation is releaseable, but we believe that some of it is excepted pursuant to Section 552.117." Exhibit 3 does contain information that is excepted from disclosure under section 552.117(2) of the Government Code. The department must withhold those portions of the records that reveal the officers' home addresses, home telephone numbers, social security numbers, and whether the officers have family members.

We have marked the section 552.131 and 552.117 information which the department must withhold *from the general public* in Exhibit 3. The department must release the remainder of Exhibit 3. However, we note that one requestor is a department employee. Section 552.023 of the Government Code provides a special right of access to a person or a person's authorized representative, beyond the right of the general public, to information that relates to the person and that is otherwise protected from required disclosure by a law intended to protect the person's privacy. *See Gov't Code § 552.023.* Therefore, you must release to the employee-requestor her own section 552.117 information, but must withhold that information from the other requestor and the rest of the public.

Exhibit 3 also contains the social security number of the other requestor. That number may not be withheld from him, but may be required to be withheld from the other requestor and

the public. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We are unable to determine whether the social security number is confidential under this federal statute. We note, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information.

In summary, the department must withhold Exhibits 1 and 2 under section 552.131, but must release basic information in accordance with section 552.029(8). The department must redact section 552.117 information and inmate-identifying information from Exhibit 3, but must release the remainder of that exhibit, and must release the requestor's own section 552.117 information to her. The department may be required to withhold the non-employee's social security number from the public under federal law. Because we find sections 552.108, 552.117, and 552.131 dispositive, we will 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 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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID#140448

Encl. Submitted documents

cc: Mr. Steven W. Howland
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