



October 24, 2000

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

OR2000-4140

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# 140447.

The Texas Department of Criminal Justice (the "department") received a request for all information relating to an Internal Affairs Division investigation. You argue that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.108 states:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if: (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The records at issue concern an internal investigation of employee misconduct. You state:

The investigation was initiated as a staff conduct inquiry, i.e., the focus was alleged employee misconduct by employees. No criminal prosecution appears to have been contemplated and the return of the batteries mooted such matters out.

Because the internal investigation did not result in a criminal investigation or prosecution of the employees, we conclude that the department may not withhold the submitted documents under section 552.108(a). *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (section 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor provision of section 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer).

You additionally argue that the identities and statements of inmates are excepted from disclosure under section 552.108(b)(1) of the Government Code. You contend that release of the inmates' identities and statements would interfere with the department's ability to ensure the safety of its facilities and would impair the department's efforts to encourage inmates to speak candidly about certain matters. You also argue that release of the inmates' identities and statements could spark retaliation from other inmates or department officers. After considering your arguments and reviewing the information at issue, we agree that release of the inmates' identities and statements would interfere with the department's law enforcement efforts. We have marked the inmates' identities and statements that you may withhold under section 552.108(b)(1). You must release the remaining information from exhibit 2 to the requestor, with the following exceptions.

Exhibit 2 contains information that you must withhold under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle title or registration. Thus, you must withhold the Texas license plate numbers under section 552.130.

You have released exhibit 1 with the exception of department employees' social security numbers. Both exhibits 1 and 2 contain department employees' social security numbers and family member information. Section 552.117(3) of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, and family member information of an employee of the department regardless of whether the employee elects to deny public access to the information under section 552.024 of the

Government Code. Therefore, you must redact the employees' social security numbers and family member information from exhibits 1 and 2 prior to releasing the documents. However, we note that the requestor in this instance is a former 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 laws intended to protect the person's privacy. *See* Gov't Code § 552.023. Therefore, you must release to the requestor his own social security number.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/seg

Ref: ID# 140447

Encl. Marked documents

cc: Mr. Joseph Todd Moore
46 Lake Falls Road
Huntsville, Texas 77340
(w/o enclosures)