



November 28, 2000

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

OR2000-4532

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# 141606.

The Texas Department of Criminal Justice (the "department") received a request for five categories of information related to the requestor's son, a department inmate. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We will first address the applicability of section 552.131(a) of the Government Code to the requested information. Section 552.131(a) 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 552.029 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 department] is subject to required disclosure under Section 552.021:

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- (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.

Upon review of the submitted information, we conclude that the department may withhold most of the information from the requestor under section 552.131(a), as it is "information about an inmate who is confined in a facility operated by or under a contract with the department." We note, however, that section 552.131 is explicitly made subject to section 552.029. Under section 552.029(8), "basic information" regarding an alleged crime involving an inmate is subject to required disclosure. Although you set forth reasons why the department is reluctant to classify the incident involving the requestor's son as an allegation of crime, our review of the records leads us to the conclusion that a crime was alleged in this instance. Accordingly, with regard to the information you submitted, pursuant to section 552.029(8), the department may not withhold basic information regarding the alleged crime based on section 552.131. Basic information includes the time and place of the incident, names of the 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.

We will next address your argument under section 552.103. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an

attorney for a potential opposing party.¹ Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) at 5 (litigation must be “realistically contemplated”). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. Upon review of the submitted information and your arguments, we find that you have not established that litigation is reasonably anticipated in this case. Therefore, the submitted information may not be withheld under section 552.103.

You also assert that the submitted information is excepted from disclosure by sections 552.101 and 552.107(2) in conjunction with the decision in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115 (5th Cir.), *amended in part*, 688 F.2d 266 (5th Cir. 1982). Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.107(2) states that information is excepted from required public disclosure if “a court by order has prohibited disclosure of the information.” The *Ruiz* decision restricted the dissemination of “sensitive information” regarding inmates. The *Ruiz* final judgment, (*Ruiz v. Collins*, No. H-78-987 (S.D. Tex., entered December 11, 1992)) gave the Board of Criminal Justice (the “Board”) authority to define the term “sensitive information.” The Board met on January 21, 2000, and decided 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, information in the categories delineated in section 552.029 is not excepted from required public disclosure by section 552.107(2) in conjunction with the *Ruiz* court order. Nor is it made confidential by judicial decision under section 552.101. Therefore, the information that is made public under section 552.029(8), which in this case is basic information regarding an alleged crime involving an inmate, is not excepted from disclosure by sections 552.101 or 552.107(2).

In summary, the department must release basic information under section 552.029(8) of the Government Code. This information may not be withheld under sections 552.101, 552.103

¹In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

or 552.107(2) and must be released to the requestor. The rest of the requested information is excepted from disclosure under section 552.131. As we are able to make a determination under these exceptions, we need not consider your claim under section 552.108.²

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).

²We 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 under 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).

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 Hadassah Schloss at 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 141606

Encl. Submitted documents

cc: Mr. Don Hill
7318 Barney
Dallas, Texas 75217
(w/o enclosures)