OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 2, 2001

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

OR2001-1355

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# 145563.

The Department of Criminal Justice (the "department") received a request for copies of all security audits conducted at the Connally Unit prison and a second request for copies of all security audits performed regularly by each prison unit within the department's jurisdiction. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We note that you submitted to us "exemplars" of the documents responsive to the second request. We assume that the Connally Unit exemplars submitted to us regarding the second request are also exemplars of the documents responsive to the first request.[1] We have considered the exceptions you claim and reviewed the submitted information. Pursuant to section 552.304 of the Government Code, we have also considered comments submitted by an attorney representing the individual who made the second request for information.

Section 552.022(a)(1) of the Government Code provides:

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[1] We assume that the "exemplars" submitted to this office are truly representative of *all* requested security audit documents. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize, the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

> (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
>
> > (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108

Gov't Code § 552.022(a)(1). As all of the responsive information falls within the ambit of § 552.022(a)(1), only that portion which is confidential or is excepted under section 552.108 may be withheld. All other information submitted to our office for review must be released to the requestor pursuant to section 552.022(a)(1) of the Government Code.

Section 552.108 of the Government Code protects the interests of law enforcement agencies by excepting certain information from disclosure. In pertinent part, this section provides:

> (a) 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.

Gov't Code § 552.108(b)(1). You contend that the release of the audits in their entirety would interfere with the department's ability to operate safe and secure facilities. This office has stated that procedural information related to law enforcement may, under some circumstances, be withheld under section 552.108 or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 341 (1982) (Department of Public Safety drivers' licenses forgery detection procedures), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime).

However, when section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. *See* Open Records Decision No. 434 at 3(1986). It is necessary to identify the *particular* records (or parts thereof) which, if released, will interfere with law enforcement or prosecution and the *particular* explanation applicable to them. *See id.* In this case, some information submitted to us supplies the explanation on its face. Therefore, this information may be withheld under section 552.108 of the Government Code.

However, some information submitted to us requires additional explanation as to why section 552.108(b) is applicable. As to this information, you have not adequately explained how its release to the public would interfere with law enforcement. Because you have not provided this particularized explanation, you may not withhold it from public disclosure pursuant to section 552.108(b) of the Government Code. Therefore, the marked information must be released pursuant to section 552.022(a) of the Government Code.

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).

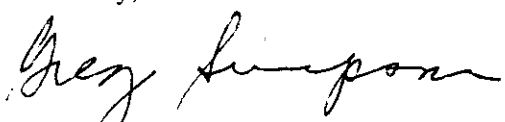
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 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,



Gregory T. Simpson
Deputy Chief
Open Records Division

GTS/RJB/seg

Ref: ID# 145563

Encl. Marked documents

cc: Mr. James Kimberly
Houston Chronicle - Austin Bureau
1005 Congress Avenue, Suite 772
Austin, Texas 78701
(w/o enclosures)

Ms. Dianne Jennings
Dallas Morning News - Austin Bureau
1005 Congress Avenue, Suite 930
Austin, Texas 78701
(w/o enclosures)