



May 31, 2001

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

OR2001-2257

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# 147791.

The Texas Department of Criminal Justice (the “department”) received a written request for

all correspondence and documentation written by my client [a prison inmate] and directed to you or any other supervising official at the McConnell Unit in November 2000, December 2000, January 2001, February 2001 and March 2001. Also please provide me with all life endangerment paperwork completed on or by [the inmate] and the full name of the female guard Perez who [sic] harassment continues to escalate and of whom we have been complaining for several months.

You contend that the requested information, to the extent it exists, is excepted from required public disclosure pursuant to sections 552.101, 552.107(2), 552.108, and 552.131 of the Government Code.

With regard to the request for “the full name of the female guard Perez,” you state that “[w]e know of no female correctional officer named Perez who is harassing [the inmate].” You further state that if the requestor were to provide the department with “more objective information” regarding the officer, the department would “try to identify” this individual for the requestor. Without addressing the validity of the underlying allegation, we nevertheless

note that information that is apparently responsive to this request is contained in a January 14, 2001 memorandum you submitted to our office. It is incumbent on the department to make a good faith effort to relate information it holds to information that is being requested under the Public Information Act. *See* Open Records Decision No. 87 (1975). Because you do not contend that the officer's identity is excepted from public disclosure, we conclude that the department must release the officer's name to the requestor.

We now address your section 552.131 claims. Section 552.131(a) of the Government Code, relating to inmates of the department, 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:

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 Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or

(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. After reviewing the records at issue, we conclude that none of the submitted information constitutes information subject to release under section 552.029 of the Government Code. Accordingly, the department must withhold the records at issue in their entirety pursuant to section 552.131 of the Government Code.¹

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

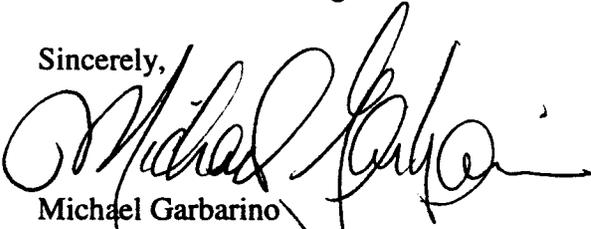
¹Because we resolve your request under section 552.131, we need not address the applicability of the other exceptions you raised.

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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/seg

Ref: ID# 147791

Encl. Submitted documents

cc: Ms. Yolanda Torres
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(w/o enclosures)