



June 8, 2001

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

OR2001-2414

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# 148165.

The Texas Department of Criminal Justice (the "department") received a request for "copies of any and all records including, but not limited to, disciplinary records for inmate Preston Hughes III, TDCJ # 000939." You claim that the requested information is excepted from disclosure under sections 552.101, 552.107(2), and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.131 provides, in relevant part, as follows:

(a) 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.

(b) Subsection (a) does not apply to:

(1) statistical or other aggregated information relating to inmates confined in one or more facilities operated by or under a contract with the department; or

(2) information about an inmate sentenced to death.

Here, the request is for information about an inmate sentenced to death. Thus, section 552.131(a) does not, in this instance, prohibit the release of any of the information at issue.

Section 552.107(2) provides that information is excepted from required public disclosure if "a court by order has prohibited disclosure of the information." You claim that the requested information is excepted from disclosure under section 552.107(2) in conjunction with the federal court's decision in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and rev'd in part*, 679 F.2d 1115, *amended in part and vacated in part, reh'g denied*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). The Stipulated Modification of the Amended Decree in the *Ruiz* case restricted the dissemination of "sensitive information" regarding inmates. See Open Records Decision No. 560 (1990). However, the final judgment in *Ruiz*, entered on December 11, 1992, gave the Texas Board of Criminal Justice (the "board") authority to define the term "sensitive information." On January 21, 2000, the board met and, acting under the authority of the final judgment in *Ruiz*, determined 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, the board has determined that information that is within one of the categories listed in section 552.029 of the Government Code is not "sensitive information" that the department may withhold from the public under section 552.107(2) in conjunction with *Ruiz*.

Section 552.029 of the Government Code provides as follows:

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[:]

- (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.

The department must release from the submitted documents all information that is subject to section 552.029. This includes, but is not limited to, basic information from the use of force report that you have submitted as Exhibit 3.¹ On the other hand, all information that is not listed in section 552.029 must be withheld pursuant to section 552.107(2) in conjunction with the *Ruiz* decision.

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

¹This office considers basic information under section 552.029(a)(8) of the Government Code to include the time and place of the incident, names of inmates and department officials directly involved in the incident, 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.

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,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 148165

Encl. Submitted documents

cc: Mr. R.J. Vargas
3700 North Main
Houston, Texas 77009
(w/o enclosures)