



July 16, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-3070

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149636.

The Texas Department of Criminal Justice (the "department") received a written request for the investigation of an inmate complaint and information concerning the use of force on another inmate. You contend that the requested information is excepted from disclosure under sections 552.101, 552.107(2), 552.117(3), and 552.131 of the Government Code.

Section 552.131 of the Government Code relates to inmates of the department and provides in relevant part:

(a) 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.

Gov't Code § 552.131(a).¹ Section 552.131 is specifically made subject to section 552.029 of the Government Code, which provides in relevant part:

¹As of the date of this letter ruling, four different sections of the Act were denominated as section 552.131. Sections 552.131 and 552.029, relating to inmates of the department, were added to chapter 552 of the Government Code by the Act of May 26, 1999, 76th Leg., R.S., ch.783, §§ 1, 2, 1999 Tex. Gen. Laws 3407-08.

Notwithstanding . . . Section 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[:]

...

(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.*

Gov't Code § 552.029(8) (emphasis added). Thus, the legislature explicitly made section 552.131 subject to section 552.029. Pursuant to section 552.029(8), "basic information" regarding an alleged crime involving an inmate is subject to required disclosure. The basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident.

After reviewing the information at issue, we conclude that the investigation concerning the inmate complaint does not come within the purview of section 552.029(8); accordingly, the department must withhold the information pertaining to that investigation in its entirety pursuant to section 552.131. On the other hand, because the use of force investigation is specifically subject to the release provision found at section 552.029(8), the department must release all basic information regarding the use of force, but the remaining information from this file also must be withheld from the public pursuant to section 552.131 of the Government Code.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

²Because we resolve your request under sections 552.029 and 552.131, we need not address the applicability of the other exceptions you raised.

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).

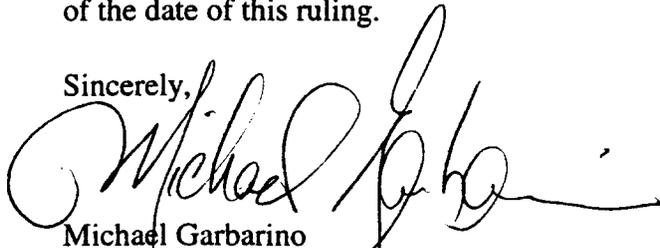
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/seg

Ref: ID# 149636

Enc. Submitted documents

c: Mr. Francis Sommer
898 Orange Street
Abilene, Texas 79601
(w/o enclosures)