



July 25, 2001

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

OR2001-3220

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# 149881.

The Texas Department of Criminal Justice (the "department") received a written request for records pertaining to three internal affairs investigations concerning the requestor and two named prison inmates. You contend that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.131 of the Government Code.

Before we address the applicability of the exceptions you raised, we must first address a procedural matter. You acknowledge that you may not have requested a decision from this office within ten business days of the department's receipt of the records request. Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information, unless there has been a previous determination that the requested information is excepted from disclosure. You state that the Beto Unit received the request on April 30, 2001; you therefore had until May 14, 2001 to request a decision from this office. You did not request a decision until May 21, 2001. Accordingly you failed to comply with section 552.301(a). When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.-Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision

No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. *See* Open Records Decision No. 150 (1977). You contend that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We conclude that you have not demonstrated a compelling reason under section 552.108 to withhold the submitted information. *See* Open Records Decision No. 586 (1991) (stating that need of law-enforcement agency other than one that received request may constitute compelling reason to overcome presumption that information is public). Therefore, we deem your section 552.108 claim waived.

On the other hand, section 552.131 of the Government Code is a mandatory exception intended to protect, among other things, the privacy interests of prison inmates. Section 552.131 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:

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.*

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.

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.

You acknowledge, and the submitted information reflects, that each of the three internal affairs investigations concern an alleged crime involving inmates. After reviewing the information at issue, we conclude that all three of the investigations come within the purview of section 552.029(8). Accordingly, the department must release the basic information pertaining to each of the investigations pursuant to section 552.029 of the Government Code. However, the department must withhold all remaining information pertaining to the three investigations pursuant to section 552.131.²

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

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

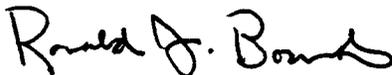
that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/RWP/seg

Ref: ID# 149881

Enc. Submitted documents

c: Ms. Kandace Hasty
c/o Beto Unit HR Office
P.O. Box 128
Tennessee Colony, Texas 75880
(w/o enclosures)