



October 15, 2001

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

OR2001-3638A

Dear Mr. Hall:

This office has been asked to examine Open Records Letter No. 2001-3638 (2001) and whether certain information is subject to required public disclosure under chapter 552 of the Government Code. This request was assigned ID# 154386.

The Texas Department of Criminal Justice (the "department") received a request for information regarding a named inmate. In the department's original request for a decision in this matter, dated June 13, 2001, you claimed that some of the requested information was protected by sections 552.101, 552.107, and 552.131 of the Government Code. In Open Records Letter No. 2001-3638 (2001) we found that the department could withhold the requested information under section 552.107(2) of the Government Code in conjunction with the decision of the federal court 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 requestor asks this office to examine Open Records Letter No. 2001-3638 (2001) in light of the federal court's decision in *Ruiz v. Johnson*, 154 F. Supp. 2d 975 (S.D. Tex. 2001). Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling.

Section 552.107(2) of the Government Code provides that information is excepted from required public disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). You claim that the information in question is excepted from disclosure under section 552.107(2) in conjunction with the decision of the federal court 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 v. Estelle* case restricted the dissemination of "sensitive information" regarding inmates. See Open Records Decision No. 560 (1990). Section III of the final judgment in *Ruiz v. Estelle*, 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 v. Estelle*, 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, this office had previously held that the department must withhold sensitive information about department inmates under section 552.107(2) of the Government Code in conjunction with *Ruiz v. Estelle*.

However, by order dated June 18, 2001, the federal court in *Ruiz v. Johnson* terminated Section III of the Final Judgment in *Ruiz v. Estelle*. *Ruiz v. Johnson*, 154 F. Supp. 2d at 989-90. As a result, sensitive information regarding department inmates may no longer be withheld from disclosure under section 552.107(2) in conjunction with the federal court's decision in *Ruiz v. Estelle*. Therefore, the department may not withhold the requested information under section 552.107.

You also argue that some of the requested information should be withheld under section 552.101 in conjunction with *Ruiz v. Estelle*. For the same reasons given above, the requested information may not be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Ruiz v. Estelle*.

Finally, you claim that some of the requested information is excepted from disclosure under section 552.131 of the Government Code. Please note that Section 552.131 of the Government Code, as added by chapter 783, Act of the 76th Legislature, relating to inmates of the department, has been renumbered as section 552.134 of the Government Code. See Act of May 22, 2001, 77th Leg., R.S., H.B. 2812, § 21.001(53) (codified at Gov't Code § 552.134). Section 552.134 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.

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

...

(2) information about an inmate sentenced to death.

Gov't Code § 552.134(a), (b)(2). Our review of the previously submitted information indicated that the named inmate (TDCJ# 999330) is an inmate sentenced to death. Therefore, section 552.134 does not apply to the requested information.

As you raise no other exception to disclosure, the requested information must be released to the requestor. We note that the information subject to release contains information that is or may be confidential with respect to the public by provisions of law intended to protect the named inmate's privacy. However, under section 552.023 of the Government Code, a person who is the subject of the information or the person's authorized representative has a special right of access to such information. Here, the requestor has provided the department with an authorization for release of records to certain individuals, including Mr. Michael B. Charlton. You recently provided this office with a copy of this authorization. Further, through recent correspondence, it has become apparent that the requestor is an employee of Mr. Charlton. Therefore, as the requestor is acting on behalf of the named inmate's authorized representative, section 552.023 provides the requestor a special right of access to information that may otherwise be private with respect to the public. Thus, the requested information must be released to the requestor.

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).

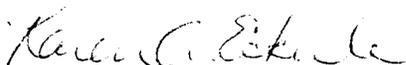
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

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