



September 14, 2001

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

OR2001-4109

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# 152006.

The Texas Department of Criminal Justice ("TDCJ") received a request for three categories of information concerning an inmate.¹ You claim that the requested information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first address a procedural matter. Among other requirements, a governmental body is required to submit to this office within fifteen business days of receiving an open records request general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code §§ 552.301(e)(1)(A), (D). By a letter dated July 12, 2001, you informed the requestor that you were seeking a decision from this office as to the availability of the requested disciplinary records under the Public Information Act. You also instructed the requestor as to where she might send a written request, along with a release signed by her son, in order to receive his medical records. You submitted copies of disciplinary records responsive to the second request category and written comments explaining your claim of exception from disclosure regarding those records. However, with respect to the first and third categories of requested information, you submitted no copies of information nor written comments to this office explaining the reasons why such information should be withheld from public disclosure under the

¹The requestor seeks the following with respect to a named inmate, her son: 1) all medical records and reports; 2) all disciplinary proceedings and results; and 3) all evaluations and reports concerning mental health.

exceptions you raised. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302. Because you submitted neither copies of such information nor comments addressing any claims of exception concerning it, we have no basis to conclude that it is excepted from disclosure. Therefore, to the extent that TDCJ possesses information responsive to the first and third categories of information in the instant request, such information must be released to the requestor. *See* Gov't Code §§ 552.301(e)(1)(A), (D), .302. We next address your claim for the submitted information.

Section 552.131(a) relating to TDCJ inmates states:

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.

The submitted records consist of information about an inmate confined in a facility operated by the department. We find that the exceptions in section 552.029 are not applicable. Therefore, TDCJ must withhold the submitted information from public disclosure under section 552.131(a).

In summary, TDCJ must withhold the submitted information from public disclosure under section 552.131(a) of the Government Code. To the extent that TDCJ possesses any information responsive to the first and third categories of the instant request, such 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).

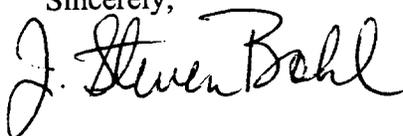
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 152006

Enc: Submitted documents

c: Ms. Patricia Yurchich
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(w/o enclosures)