OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

September 14, 2001

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

OR2001-4114

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# 151977.

The Texas Department of Criminal Justice (the "department") received a request for a copy of the "CJAD/SAFPF Procedure Manual" (the "CJAD manual") and the "TDCJ Substance Abuse Treatment Operations Manual" (the "SATO manual"). You state that you intend to provide the requestor with some of the responsive information. However, you claim that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may make comments stating why information should or should not be released).

We note at the outset that you did not submit any responsive information from the CJAD manual or any other information besides the submitted information from the SATO manual. Accordingly, we find that, to the extent that you have not already done so and the information exists, you must provide the requestor with all other portions of the SATO manual and the entirety of the CJAD manual at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.108 of the Government Code provides in pertinent part:

> (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:
>
> > (1) release of the internal record or notation would interfere with law enforcement or prosecution.

Gov't Code § 552.108(b)(1). This office has determined that procedural information related to law enforcement may, under some circumstances, be withheld under section 552.108 or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 341 (1982) (Department of Public Safety drivers' licenses forgery detection procedures), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). However, when section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. *See* Open Records Decision No. 434 at 3(1986). You state that release of the submitted information would improve the capacity of inmates to thwart the security of prison facilities. You also state that the submitted information contains details the disclosure of which would compromise the security and safety of the institution, staff, other inmates, and the public. Based on your arguments and our review of the submitted portions of the SATO manual, we conclude that you may withhold the marked portions of the SATO manual from disclosure pursuant to section 552.108(b)(1) of the Government Code.

In summary, you must release to the requestor at this time the CJAD manual and the portions of the SATO manual that you did not submit to us for review to the extent that such information exists, if you have not already done so. You may withhold the marked portions of the submitted SATO manual from disclosure pursuant to section 552.108(b)(1) of the Government Code. You must release the remaining portions of the submitted SATO manual to the requestor at this time.

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).

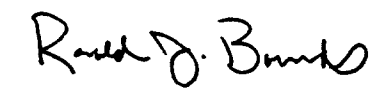
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 151977

Enc. Marked documents

cc: Mr. Ronald D. Perkins
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(w/o enclosures)