



October 8, 2001

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

OR2001-4515

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# 152907.

The Texas Department of Criminal Justice (the "department") received a request for a copy of an internal affairs investigation file referred to by the requestor as a "red folder." You claim that some of the requested information is excepted from disclosure under sections 552.108 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code makes certain information expressly public and, therefore, not subject to discretionary exceptions to disclosure. Section 552.022 states in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

Gov't Code § 552.022. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). You have submitted to this office a "Report of Investigation" from the department's Internal Affairs Division. It appears that the investigation, which took place in July 1999, is now closed. Therefore, as prescribed by section 552.022, the submitted Report of Investigation must be released to the requestor unless it is confidential under other law or excepted under section 552.108. Section 552.131 (now section 552.134) of the Government Code is considered "other law" that makes information confidential. Therefore, we will address your claims under sections 552.108 and 552.131 of the Government Code.

You argue that some of the information in Exhibit 2 may be withheld under section 552.108(b) of the Government Code. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). The department is a law-enforcement agency for purposes of section 552.108. When this exception 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. Open Records Decision No. 434 at 3 (1986).

This office has concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that section 552.108 excepts sketch showing security measures for execution). You argue that releasing the information in Exhibit 2 may "chill the candor of future employee and inmate witnesses" during future investigations of employee conduct. Upon review of the submitted information, we conclude that the information in Exhibit 2 does not supply an explanation on its face of how release would interfere with law enforcement. As to this information, we conclude that you have not adequately demonstrated how its release to the public would interfere with law enforcement. Because you have not provided an adequate particularized explanation, you may not withhold the information in Exhibit 2 from public disclosure pursuant to section 552.108(b)(1) of the Government Code.

Section 552.108(b)(2) excepts from required public disclosure "[a]n 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 . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(2). A governmental body claiming section 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Because the information in Exhibit 2 relates to an internal investigation of employee misconduct that did not result in a criminal investigation, we conclude that the department may not withhold the information in Exhibit 2 under section 552.108(b)(2). *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (section 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor provision of section 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer).

You also contend that some of the information in Exhibits 2 must be withheld 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(a) of the Government Code provides:

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.

Section 552.029 of the Government Code provides:

Notwithstanding Section 508.313 or 552.134, 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 under Section 552.021:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;
- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or
- (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.

We have marked the information in Exhibit 2 to which section 552.134 applies. We note, however, that section 552.134 is explicitly made subject to section 552.029. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged

crime involving an inmate, and an incident involving the use of force is subject to required disclosure. Some of the information in Exhibit 2 pertains to an incident involving the use of force against a department inmate. Accordingly, while the department must generally withhold the information we have marked in Exhibit 2 under section 552.134, it must release all basic information regarding this incident pursuant to section 552.029(8). Basic information includes the time and place of the incident, names of inmates and department officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. You state that the department has released the basic information regarding this incident by providing the requestor with a copy of your August 10, 2001 brief, which includes some pertinent information about the incident. We emphasize that the Public Information Act requires a governmental body to release a copy of the actual requested record, with excepted information redacted, unless the requestor agrees otherwise. *See* Open Records Decision No. 606 (1992).

To summarize, we have marked the information in Exhibit 2 that is subject to section 552.134. With the exception of basic information regarding the alleged use of force, the marked information must be withheld. The remaining unmarked information must be released to the requestor.¹

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

¹ 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 requestor's privacy. However, in this instance, the requestor has a special right of access to this information. *See* Gov't Code § 552.023.

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

Ref: ID# 152907

Enc: Submitted documents

c: Ms. Linda Burchfield
P.O. Box 463
Midway, Texas 75852
(w/o enclosures)