OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

February 22, 2002

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas77342

OR2002-0860

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# 158915.

The Texas Board of Criminal Justice (the "Board") received a request for: 1) "a copy of the contract TDCJ has with its employees concerning litigation brought against the employees for actions taken by the employees during the scope of their duties;" 2) "a copy of the TDCJ's instruction manual for disciplinary hearing officers;" and 3) "a copy of the investigative reports into the 1999 death row escape, including the report received from the Texas Rangers." You state that the Texas Department of Criminal Justice ("TDCJ") maintains two reports on the attempted escape of seven death row inmates which are responsive to the request. One, which you say you have made available to the requestor, is the special investigation into the matter presented to the Board at its November 1998 meeting. The other is a criminal investigation by the TDCJ's Internal Affairs Division. You claim that this criminal investigation report, which you have submitted to this office, is excepted from disclosure under sections 552.108 and 552.117 of the Government Code.[1] We note that you represent that this request was made to another governmental body. *See* Gov't Code §491.001(a); chs. 492, 493. However, the TDCJ may choose to respond to this request and request a ruling. We will therefore address your claims.

[1]You informed the requestor that the requested contract does not exist. In addition, you state that the Board does not possess the requested instruction manual. You state that you have advised the requestor as to the proper TDCJ department to which the request should be directed. However, rather than requiring the requestor to make another request, the TDCJ must promptly release to the requestor the requested manual. *See* Gov't Code §552.221; *see also* Open Records Decision No. 665 (2000).

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(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. Based on the information you provided, we understand you to assert that the requested information pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston,* 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law.[2] Gov't Code § 552.007.

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

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[2]Because we find that the requested information is excepted under section 552.108, we need not reach your section 552.117 claim.

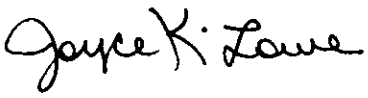
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 158915

Enc: Submitted documents

c: Ms. Yolanda Torres
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(w/o enclosures)