



February 26, 2002

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

OR2002-0929

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# 159028.

The Texas Department of Criminal Justice (the “department”) received a written request for, among other things, two categories of information: the “administrative review of the Major Disturbance (riot) at the Preston E. Smith Unit in Lamesa . . . along with any disciplinary action and punishment taken against the major or wardens”<sup>1</sup> and the “EEO complaint” filed against a named department employee “and any punishment received.” You contend that most of the information at issue is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.134 of the Government Code.<sup>2</sup>

We note at the outset that some of the records you submitted to our office as being responsive to the requests are specifically made subject to section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

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

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, *except as provided by Section 552.108[.]* [Emphasis added.]

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<sup>1</sup>We note that you have not submitted any “disciplinary” records in connection with this request.

<sup>2</sup>We assume the department has released the remaining requested information to the extent it exists. If it has not, it must do so at this time. See Gov’t Code §§ 552.301, .302.

The submitted information consists in part of two completed reports. Consequently, the department may withhold the submitted information only to the extent the information is made confidential under other law or is otherwise protected by section 552.108 of the Government Code. Because you raise section 552.101, which protects "information considered to be confidential by law," section 552.108, and the mandatory sections 552.117 and 552.134, we will consider the applicability of each of these exceptions to the records at issue.

We first address the information you contend is protected from public disclosure under section 552.101 of the Government Code. Section 552.101 protects information protected by common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common-law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.*

One of the completed reports you submitted to this office pertains to a completed sexual harassment investigation. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Id.* at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In conclusion, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* Based on *Ellen*, a governmental body must withhold the identities of alleged victims and witnesses to alleged sexual harassment as well as any information that would tend to identify a witness or victim.

The submitted information contains some documents that we consider to be analogous to the summary released in *Ellen*, as well as the department's sexual harassment policy and the accused person's statement. The department must release this information in accordance with the holding in *Ellen*. However, the department must redact from these documents the information identifying the complainant and witnesses. The remaining information contained in the report, including individual complainant and witness statements and other supporting documentary evidence, must be withheld in accordance with *Ellen* pursuant to section 552.101 in conjunction with common-law privacy.

The sexual harassment report also contains department employees' social security numbers and family member information. Section 552.117(3) requires the department to withhold "information that relates to the home address, home telephone number, or social security number, or that reveals whether" a department employee "has family members." Accordingly, the department must withhold the information we have marked pursuant to section 552.117(3).

We now address the extent to which the other completed report is excepted from public disclosure pursuant to section 552.108 of the Government Code. You contend that the "Serious Incident Review," a report concerning an inmate riot that occurred at the Smith Unit, comes under the protection of section 552.108(a)(1) and 552.108(b)(1) of the Government Code. Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime."

You argue that this report comes within the protection of section 552.108(a)(1) because the report "relates" to various pending criminal investigations of crime that occurred during the prison riot. Our review of the report, however, reveals the report constitutes an administrative analysis of the department's response to the riot and refers only briefly to one criminal suspect. You have not demonstrated how the release of this administrative report would interfere with the pending criminal investigations. We therefore conclude that section 552.108(a)(1) is inapplicable.

Section 552.108(b)(1) of the Government Code provides an exception to required public disclosure for an internal record of a law-enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." To withhold internal records and notations of law enforcement agencies and prosecutors under section 552.108(b)(1), a governmental body must demonstrate how release of the information would interfere with law enforcement and crime prevention unless the records supplied this explanation on their face. *See Open Records Decision No. 508 at 2 (1988)*. After reviewing the report, we have determined from the face of the information that release of some of the information would interfere with prison security, and we have marked that information accordingly. You have not adequately explained, nor could this office discern, how the release of the remaining information would interfere with the department's internal security efforts. Consequently, no other information may be withheld pursuant to section 552.108(b)(1).

Finally, you contend that portions of the "Serious Incident Review" report are excepted from public disclosure pursuant to section 552.134 of the Government Code, which 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.

Section 552.134 is explicitly made subject to section 552.029. We have marked the information relating to inmates. The department must release pursuant to section 552.029(8) all "basic information" regarding "the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate." The basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. The remaining inmate information must be withheld pursuant to section 552.134. However, the rest of the information in this report must be released, except as discussed above.

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).

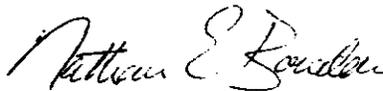
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/RWP/er

Ref: ID# 159028

Enc: Submitted documents

c: Mr. Ed C. Foree  
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(w/o enclosures)