



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 26, 1995

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR95-231

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32131.

The Texas Department of Criminal Justice (the "department") has received a request for a particular incident report. You have submitted the requested information for our review and claim that sections 552.107 and 552.108 of the Government Code except the information from required public disclosure.

Section 552.107(2) excepts information from required public disclosure when a court order prohibits its release. You claim that section 552.107(2) applies to this request for information because incident reports are specifically made sensitive by the Stipulated Modification of Section II and Section IIA (the "Stipulated Modification") of the amended decree in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115 (5th Cir.), *amended in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). In Open Records Decision No. 560 (1990), this office concluded that the predecessor to section 552.107(2) prohibited disclosure of "sensitive materials" as defined in the Stipulated Modification. "Sensitive materials" include, among other things, "an inmate's unit and department files, and all documents typically filed therein, travel cards, disciplinary reports, *incident reports*, use of force reports and grievances." Stipulated Modification at 2 (emphasis added). The Stipulated Modification further provides that "[n]o inmate has access to sensitive information, and all sensitive materials are kept inaccessible." *Id.* at 9.

In Open Records Decision No. 560 (1990), we concluded that because the *Ruiz* lawsuit was not yet final, the forum court was the proper authority to determine that court's intent in the Stipulated Modification. However, the final judgment in *Ruiz* was signed on December 11, 1992. We are currently reviewing the effect of the final judgment in *Ruiz* on the public availability of department records under the Open Records Act in RQ-779. Therefore, you may withhold the incident reports pending the outcome of that decision.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/rho

¹The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the written request for information. When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests). However, we realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request.

We did not receive the records by April 19, 1995, the deadline established by this office after speaking with a department representative regarding the additional information this office needed in order to make a determination. We received a faxed copy of the records on April 24, 1995. Although you informed us that these documents were mailed to our office on April 19, this office did not receive this mailing until April 25; the envelope did not contain a postmark or any other evidence of when it was mailed. However, in this case, we need not determine whether the documents were timely sent; the fact that the requested records may be protected from disclosure by a court order under section 552.107(2) overcomes any presumption of openness that may have been created by not providing the records to this office in a timely manner.

Ref.: ID# 32131

Enclosures: Submitted documents

cc: Ms. Vina Payne
1500 Clayton Street
Borger, Texas 79007
(w/o enclosures)