



November 17, 1999

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

OR99-3289

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# 130101.

The Texas Department of Criminal Justice (the "department") received a request for a videotape of a specified "use of force" incident. You have supplied the responsive information to this office for review. You claim that the requested information is excepted from disclosure under Government Code sections 552.101, 552.107 and 552.131.

We initially note that the Public Information Act requires a governmental body that wishes to withhold requested information to (1) request a decision from the Attorney General as to whether the information is within an exception to disclosure, (2) provide the requestor a copy of that request for decision, and (3) provide the requestor a statement that the governmental body wishes to withhold the information and has sought a decision from the Attorney General. Gov't Code § 552.301. These actions must be taken by the governmental body within ten business days of the governmental body's receipt of the request for information. *Id.* If the governmental body does not comply with the requirements of Government Code section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. In this case, you received the request for information on July 12, 1999, and your request for decision is postmarked, September 30, 1999. Therefore, you have not requested a decision within the statutory time period. The information is therefore presumed to be subject to public disclosure. However, you have asserted that the subject information is made confidential by other law. As such a demonstration constitutes a compelling reason to withhold information we shall address the exceptions that you have claimed. *See* Open Record Decision No. 150 (1977).

Section 552.107(2) of the Government Code excepts from required public disclosure information if “a court by order has prohibited disclosure of the information.” You have submitted to this office a copy of a portion of the Final Judgment in the case of *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992), which contains the following language:

No prisoner shall be permitted to . . . obtain sensitive information about other prisoners absent a state or federal court order. . . . ‘Sensitive information’ is defined in Section I.G of the Stipulated Modification of Sections II.A and II.D of Amended Decree, but this definition may be modified by the Board of Criminal Justice as appropriate and consistent with the purposes of this paragraph III.

Section I.G. of the Stipulated Modification of Section II.D and Section II.A 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 (5<sup>th</sup> Cir.), *amended in part*, 688 F.2d 266 (5<sup>th</sup> Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983), indicates that “sensitive information” includes videotapes of instances of the use of force on inmates. *See* Open Records Decision No. 560 (1990). Based on these cases, we have previously held that the public release of “use of force” incident videotapes is prohibited. *See* Open Records Letter No. 98-0507 (1998). We note that Government Code section 552.029(8) makes “basic information” about an incident involving the use of force, relating to an inmate of the Department of Criminal Justice, subject to required disclosure. However, the term “basic information” is not defined. We are of the opinion that the responsive videotape is not made subject to public disclosure by this provision. We conclude that this information must be withheld under section 552.107(2) of the Government Code.

As section 552.107(2) resolves this decision, we do not address your arguments under other sections of the Government Code. 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 regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 130101

Encl. Submitted documents

cc: Ms. Denise Thompson  
2205 Amhearst Court  
Flower Mound, Texas 75208  
(w/o enclosures)