



December 15, 1999

Ms. Cynthia N. Milne  
Deputy General Counsel - Opinions  
P. O. Box 4004  
Huntsville, Texas 77342-4004

OR-3647

Dear Ms. Milne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129824.

The Texas Department of Criminal Justice (“TDCJ”) received a request for information from a former employee for any and all documents relating to his termination from TDCJ. You assert that the requested information is exempt from disclosure pursuant to sections 552.107 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted documents.

You claim that the information in Item 1 and the bracketed information in Item 2 may be withheld under section 552.107. Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only “privileged information,” that is, information that reflects either confidential communications from the client to the attorney or the attorney’s legal advice or opinions; it does not apply to all client information held by a governmental body’s attorney. Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client’s communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney’s legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We have determined that the information in Item 1 and the bracketed information in Item 2 may be withheld under section 552.107(1) as attorney advice and opinion or client confidences.

With regard to the bracketed information in Item 3, you assert that its release is prohibited pursuant to section 552.131(a). Item 3 consists of an incident report and cover memo which involves a TDCJ inmate. Section 552.131(a) relating to TDCJ inmates states:

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 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 states:

Notwithstanding . . . Section 552.131, 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:

...

(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 552.131 is explicitly made subject to section 552.029. Under section 552.029 basic information regarding the death of an inmate in custody and an incident involving the use of force is subject to required disclosure. The requested documents pertain to an incident involving the use of force against a TDCJ inmate. Accordingly, while most of the information is confidential under section 552.131, basic information regarding the incident must be released pursuant to section 552.029. Basic information includes the time and place of the incident, name of inmate and TDCJ 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.<sup>1</sup>

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

---

<sup>1</sup>As sections 552.029 and 552.131 were recently enacted by the Seventy-sixth Legislature, we find that they supercede our prior analysis of section 552.107(2) in regard to the 1992 court order from *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992). See Act of May 26, 1999, 76<sup>th</sup> Leg., R.S., ch. 783, § 2, 1999 Tex. Sess. Law Serv. 3407, 3408 (Vernon) (codified at Gov't Code § 552.029); see also *id.* § 1, 1999 Tex. Sess. Law Serv. 3407, 3407-08 (Vernon) (codified at Gov't Code § 552.131).

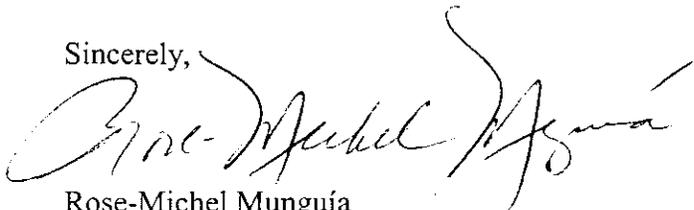
from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, 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).

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,



Rose-Michel Munguía  
Assistant Attorney General  
Open Records Division

RMM/jc

Ref: ID# 129824

Encl: Submitted documents

cc: Mr. William R. Starling  
5424g Frank Lane  
Granbury, Texas 76049  
(w/o enclosures)