OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

December 22, 1999

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

OR99-3715

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 130495.

The Texas Department of Criminal Justice (the "TDCJ") received a request for all documents in specific disciplinary reports of an inmate and tape recordings of the disciplinary hearings. The requestor also asked for a videotape of the inmate recorded on May 13, 1998.[1] You claim that the requested information is excepted from disclosure under sections 552.107 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.131(a) of the Government Code 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.

We have reviewed the submitted information and find that the disciplinary reports amount to information about an inmate and, therefore, TDCJ must withhold the requested

[1]You assert that a videotape might exist but you are unable to locate it at the present time.

information under section 552.131.[2] We note that section 552.131 is subject to section 552.029 of the Government Code and we assume that you have released any basic information required by section 552.029.

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).

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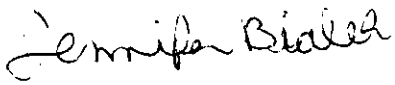
[2]As sections 552.029 and 552.131 were recently enacted by the Seventy-sixth Legislature, we find that they supercede our prior analysis of section 552.107(2) in regard to the 1992 court order from *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992). *See* Act of May 26, 1999, 76th Leg., 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). Accordingly, sections 552.029 and 552.131 are dispositive of this matter and we need not address your argument concerning section 552.107 and the *Ruiz* order.

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,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ljp

Ref: ID# 130495

Encl. Submitted documents

cc: Mr. Leland Oliver
Attorney at Law
300 E. Roundgrove, #2022
Lewisville, Texas 75067
(w/o enclosures)