



June 16, 2000

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

OR2000-2338

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# 135829.

The Texas Department of Criminal Justice (the “department”) received a written request from an attorney for records pertaining to a prison riot in which the requestor’s client, a prison inmate, was allegedly involved.¹ You have submitted the following records to this office as being responsive to the request:

1. A Use of Force Report created in connection with the riot;
2. An inmate disciplinary and hearing report relating to discipline imposed on the requestor’s client;
3. Investigative material used in connection with the disciplinary matter;
4. The grievances filed by the requestor’s client in connection with the disciplinary action taken against the inmate, and the department’s response to the grievances;

¹Section 552.028(a)(2) of the Government Code requires the department to “accept or comply with a request for information” from an inmate’s attorney, “when the attorney is requesting information that is subject to disclosure under this chapter.” This provision, however, does not provide the attorney with any greater right of access to information than any other member of the public.

5. Staff notes and investigative material generated in connection with the grievances;
6. A video tape recording of the use of force referenced in item 1 listed above; and
7. An audio tape recording of the disciplinary hearing referenced in items 2 and 3.

You state that the department has released to the requestor the documents listed above as items 2 and 4. You seek to withhold the remaining responsive information pursuant to section 552.131 of the Government Code.²

Section 552.131(a), relating to inmates of the department, 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 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 [:]

- . . .
- (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(8), “basic information” regarding the use of force or an alleged crime involving an inmate is subject to required disclosure. Accordingly, with regard to the information you submitted, the department must release basic information regarding the use of force and the inmate’s alleged criminal behavior. Basic information includes the time and place of the incident, names of the inmates directly involved, a brief narrative of the incident, a brief description

²Because we resolve your request under section 552.131, we need not address your arguments for non-disclosure under section 552.107 of the Government Code.

of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.³ All remaining information in the submitted documents must be withheld from the public pursuant to section 552.131.

The requestor contends, however, that he has a special right of access to the remaining information pursuant to section 552.023 of the Government Code because he is acting as his client's authorized representative. Section 552.023 provides in pertinent part:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

The requestor specifically contends that the primary purpose of section 552.131 is to protect the privacy interests of individual inmates and, consequently, that the records at issue therefore should be released to him in his capacity as his client's authorized representative. Although we agree that one of the purposes of section 552.131 is to protect inmates' privacy interests, we believe that this section also protects certain law enforcement interests of the department, *i.e.*, to prevent one prisoner from obtaining information about the other prisoner and thereby gain power or an advantage over that prisoner. An individual's right of access to private information under section 552.023 does not override exceptions to disclosure in the Public Information Act protecting some interest other than that individual's privacy. *See* Open Records Decision Nos. 587 (1991), 556 (1990). We conclude, therefore, that the requestor does not have a special right of access to information excepted from public disclosure under section 552.131, despite the fact that he is acting as his client's authorized representative.

To summarize, the department must withhold from the public the following documents pursuant to section 552.131 of the Government Code:

A Use of Force Report created in connection with the riot;

Investigative material used in connection with the disciplinary matter;

³We believe this "basic information" is contained in the records previously released to the requestor.

Staff notes and investigative material generated in connection with the grievances;

A video tape recording of the use of force; and

An audio tape recording of the disciplinary hearing referenced in items 2 and 3.

The requestor, acting as his client's authorized representative, does not have a special right of access to these materials pursuant to section 552.023 of the Government Code.

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.

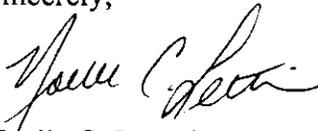
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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).

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,

A handwritten signature in black ink, appearing to read "Noelle C. Letteri". The signature is fluid and cursive, with the first name "Noelle" being the most prominent part.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/RWP/ljp

Ref: ID# 135829

Encl.: Submitted documents
Audio and video tape

cc: Mr. Gary Cohen
Attorney at Law
1307 West Avenue
Austin, Texas 78701
(w/o enclosures)