



March 16, 2001

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

OR2001-1037

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# 145009.

The Texas Department of Criminal Justice (the "department") received four requests for information relating to the escape of seven inmates from the Connally Unit on December 13, 2000, to include the following:

- (1) inmate classification histories;
- (2) visitor lists of the seven escapees;
- (3) all internal reports regarding the escape to include witness and/or guard statements and any videotapes;
- (4) any reports, letters or memoranda from guards over the past four years concerning security at the facility;
- (5) any and all departmental memos or correspondence for the year prior to the escape calling for a need to increase security based on threats of potential violence or escape;

(6) all information for the past six years dealing with guards at the Connally Unit who were alleged to have brought weapons into the facility for inmates, including information on any guards who were fired or reprimanded for supplying weapons; and

(8) a breakdown of the manpower staffing requirements for the facility versus the current staff size.

We have combined these four requests into one ruling with the identification number noted above.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that the department could not locate any written statements from guards expressing concerns about security and safety at the Connally Unit, nor are you aware of allegations or confirmed cases of officers introducing weapons into the Connally Unit to supply them to inmates. Chapter 552 of the Government Code does not require a governmental body to make available information that did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not exist when governmental body receives a request for it). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision No. 605 (1992), 572 (1990), 416 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). If the department holds information from which the requested information can be obtained, it must provide that information to the requestor unless it is otherwise excepted from disclosure.

We will next address your arguments for the responsive information. You assert that all of the responsive information is excepted from disclosure under section 552.131 of the Government Code. Section 552.131(a) 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.

¹We note your correspondence to this office dated January 19, 2001 in which you withdrew your request for a ruling on the request submitted to the department by Mr. John T. O'Ferrell. In that correspondence, you informed us that Mr. O'Ferrell had withdrawn his request to the department. Therefore, we will address only your arguments for withholding the information responsive to the three remaining requests.

Section 552.029 of the Government Code provides in relevant part:

Notwithstanding Section 508.313 or 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with [the department] 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.

Upon review of the submitted information, we conclude that the department may withhold most of the information from the requestors under section 552.131(a), as it is “information about an inmate who is confined in a facility operated by or under a contract with the department.” We note, however, that section 552.131 is explicitly made subject to section 552.029. Under section 552.029(8), “basic information” regarding an alleged crime involving an inmate is subject to required disclosure. Accordingly, pursuant to section 552.029(8), the department may not withhold basic information regarding the two felonies, escape and aggravated kidnapping, which you inform us the inmates are alleged to have committed. Basic information includes the time and place of the incident, names of the inmates and department 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. In this regard, we note you also raise section 552.108 for much of the requested information. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” However, section 552.108 also requires the release of basic information. See Gov’t Code § 552.108(c). Therefore, we do not believe section 552.108 would in this case authorize the department to withhold information required to be released as basic information under section 552.029(8).

In addition, we note that the submitted information also contains autopsy reports. Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. Pursuant to section 11, the autopsy reports are public records and must be released to the requestor whose request encompassed this information.

To summarize, the department must withhold the requested information under section 552.131 of the Government Code, with the exception of basic information relating to the two felonies alleged to have been committed by the inmates which must be released under section 552.029(8), and the autopsy reports we have marked with a yellow tag which must be released pursuant to section 11 of article 49.25 of the Code of Criminal Procedure. As we resolve your request under section 552.131, we need not address your other raised exceptions to disclosure.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 145009

Encl. Submitted documents

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