Office of the Attorney General • State of Texas
JOHN CORNYN

April 2, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-1295

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145601.

The Texas Department of Criminal Justice (the "department") received a request for a specified inmate's disciplinary records and grievances regarding the discipline for alleged involvement in a prison riot on a specified date. The department received a second request from the same requestor for two specified videotapes. You state that you will release a copy of the disciplinary report and any grievance filed by the inmate. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for an attorney general's decision and state the exceptions that apply no later than the tenth business day after the date of receiving the written request. Further, section 552.301(e)(1) requires a governmental body to submit to this office within fifteen business days of receiving an open records request a signed statement or sufficient evidence showing the date the governmental body received the written request. You state that the department is unable to determine the date it received the first request for information. Therefore, the department is unable to provide sufficient evidence showing the date the governmental body received the written request. As you concede, based on the date of the request, you have failed to request a decision within ten business days as required by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code

§ 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). However, section 552.131 of the Government Code provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Therefore, we will address your assertions.

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.

After reviewing the submitted information and videotape, we conclude that the submitted information consists of information "about an inmate who is confined in a facility operated by or under a contract with the department" and, therefore, is excepted under section 552.131. Further, none of the exceptions in section 552.029 apply to the submitted information. Therefore, you may withhold the submitted information under section 552.131.[1]

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

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[1]Because you may withhold the information under section 552.131, we need not address the applicability of sections 552.101 and 552.107.

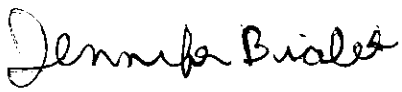
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records 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,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 145601

Encl: Submitted documents

cc: Mr. William T Habern
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(w/o enclosures)