



April 24, 2001

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

OR2001-1640

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# 146365.

The Texas Department of Criminal Justice (the "TDCJ") received a request for nine categories of information related to a specified inmate and to TDCJ rules and procedures. You have submitted responsive information which you claim is excepted from disclosure under sections 552.101, 552.107(1), 552.108 and 552.131 of the Government Code.

The Public Information Act requires a governmental body that wishes to withhold requested information to request a decision from the attorney general as to whether the information is within an exception to disclosure within ten business days of the governmental body's receipt of the request for information. Gov't Code § 552.301(d). Failure to comply with the requirements of section 552.301 results in the presumption that the information is public. Gov't Code § 552.302. You acknowledge that TDCJ did not timely submit its request for a decision for the information requested. This information is therefore presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. A compelling reason is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Record Decision No. 150 (1977). Section 552.108 does not provide a compelling reason to withhold information when it raised, as here, to protect the interest of the governmental body that is seeking to withhold information. *See, e.g.*, Open Records Decision No. 522 (1989). As the remaining exceptions that you have asserted raise confidentiality considerations, we will address those exceptions as they relate to the information that you have submitted to this office.

We first note that request categories 2, 3, and 7 are for policies and procedures. You have not asserted any exception to disclosure that you contend applies to such information. The information responsive to requests for policies and procedures regarding property confiscated from inmates; discipline regarding contraband; and inmate classification levels must be released to this requestor. From your representations and our review of the submitted materials we conclude that, other than the requested policy and procedure information, the submitted information was obtained or is maintained by the TDCJ and is about an inmate who is confined in a facility operated by or under a contract with the department and is therefore subject to section 552.131 of the Government Code. In pertinent part this section provides:

- (a) 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.
- (b) Subsection (a) does not apply to:
 - (1) statistical or other aggregated information relating to inmates confined in one or more facilities operated by or under a contract with the department; or
 - (2) information about an inmate sentenced to death.

We find that the submitted information does not fall within the ambit of subsection (b). However, section 552.131 is explicitly made subject to section 552.029, which provides:

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 Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

- (1) the inmate's name, identification number, age, birthplace, physical description, or general state of health or the nature of an injury to or critical illness suffered by the inmate;
- (2) the inmate's assigned unit or the date on which the unit received the inmate, unless disclosure of the information would violate federal law relating to the confidentiality of substance abuse treatment;

- (3) the offense for which the inmate was convicted or the judgment and sentence for that offense;
- (4) the county and court in which the inmate was convicted;
- (5) the inmate's earliest or latest possible release dates;
- (6) the inmate's parole date or earliest possible parole date;
- (7) any prior confinement of the inmate by the Texas Department of Criminal Justice or its predecessor; or
- (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.

The "basic information" required to be released under section 552.029(8) includes the time and place of the incident, names of inmates 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. We have marked several documents as examples of references to alleged crimes involving the inmate. The basic information about all such incidents is made public by section 552.029. The submitted materials also include the inmate's name, identification number, age, birthplace, physical description, general health, release date, parole eligibility date, and date received by the units, which is also information made public by section 552.029.

You raise sections 552.101 and 552.107 in conjunction with *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115 (5th Cir.), *amended in part*, 688 F.2d 266 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). The *Ruiz* decision restricted the dissemination of "sensitive information" regarding prison inmates. The *Ruiz* final judgement, entered December 11, 1992, gave the Board of Criminal Justice authority to define "sensitive information." This Board met on January 21, 2000, and decided:

The term 'Sensitive Information' shall include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to Section 552.029, Government Code.

Thus, information in the categories delineated in section 552.029 of the Government Code is not "sensitive" information subject to *Ruiz*.

We conclude that the submitted information which we have identified as subject to public disclosure under Government Code section 552.029, and the information responsive to

requests for policies and procedures, must be released. The remaining responsive information must be withheld under Government Code section 552.131.

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).

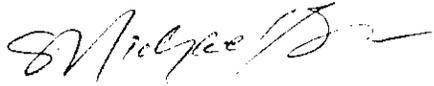
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "Michael J. Burns". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/rr

Ref: ID# 146365

Encl: Submitted documents

cc: Mr. Roy Cooper
11949 Titania Circle
Indianapolis, Indiana 46236-7704
(w/o enclosures)