



June 20, 2001

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

OR2001-2619

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# 148643.

The Texas Department of Criminal Justice (the "department") received a request for an inmate's:

- 1) [c]omplete TDCJ file, including but not limited to, all offenses committed since the inmate's incarceration, all in-house disciplinary records, including his conduct and disciplinary measures initiated and/or taken by TDCJ;
- 2) All health and medical records, regarding psychological and psychiatric profiling, including test results;
- 3) All files maintained by the Internal Affairs Division, including those related to all investigations conducted on behalf of TDCJ regarding the inmate's conduct and all reports prepared in connection with such investigations including the TDCJ investigation of the incidents listed below:
 - a) The inmate's sexual assault of a kitchen worker at the Telford Unit on April 16, 1996;

- b) The inmate's sexual assault and/or kidnaping of two nurses at Lubbock's University Medical Center on January 3-4, 2001.

- 4) All incident reports prepared by or for TDCJ for dissemination to the general public and media, involving the alleged criminal conduct by said inmate.

You state that the department is not the custodian of records responsive to request item no. 2. You argue some documents responsive to request item no. 2 are excepted from disclosure by section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code, and by section 552.131 of the Government Code. However, because you state that you are not the custodian of records responsive to request item no. 2, we do not address the applicability of section 159.002 to item no. 2. You also state that you have referred the requestor to the department's Office of Public Affairs for a response to the request for item no. 4. You have submitted for our review documents responsive to only request item nos. 1 and 3. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.131 of the Government Code. We have considered your claims and reviewed the submitted information.

We first address your argument under section 552.131 of the Government Code. Section 552.131 relates to inmates of the department and provides in relevant part:

- (a) 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.

Gov't Code § 552.131(a).¹ Section 552.029 of the Government Code provides in relevant part:

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[:]

...

¹ As of the date of this letter ruling, four different sections of the Act are denominated as section 552.131. Sections 552.131 and 552.029, relating to inmates of the department, were added to chapter 552 of the Government Code by the Act of May 26, 1999, 76th Leg., R.S., ch.783, §§ 1, 2, 1999 Tex. Gen. Laws 3407-08.

(8) basic information regarding . . . an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). Thus, the legislature explicitly made section 552.131 subject to section 552.029. Pursuant to section 552.029(8), "basic information" regarding an alleged crime or use of force involving the inmate is subject to required disclosure. The basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. Thus, the department may not withhold from the requestor basic information about any incident involving the use of force or an alleged crime involving an inmate. As to the remainder of the submitted records, we conclude that information is excepted from disclosure under section 552.131.

Because we are able to resolve your request under section 552.131, we need not address the applicability of sections 552.103 and 552.108 except to note that the information that is subject to release under section 552.029 is not excepted by either of these exceptions. See Gov't Code § 552.022(a)(1) (section 552.103 inapplicable to completed investigations); Gov't Code § 552.108(c) (section 552.108 does not protect basic information). 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,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/DKB/seg

Ref: ID# 148643

Enc. Submitted documents

cc: Mr. Carl W. Hayes
1100 Louisiana Street, Suite 4200
Houston, Texas 77002
(w/o enclosures)