



August 15, 2001

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

OR2001-3593

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# 150761.

The Texas Department of Criminal Justice (the "department") received a request for a copy of an audiotape of a specified record case hearing concerning a named inmate. You claim that the submitted audiotape is excepted from disclosure pursuant to sections 552.101, 552.107, and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted audiotape.

We note at the outset that you failed to comply with the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides in pertinent part:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a),(b). The department states, and we agree, that it has not sought an open records decision from this office within the statutory ten business day deadline. *See*

Gov't Code § 552.301. The department's delay in this matter results in the presumption that the submitted audiotape is public. *See id.* § 552.302; *see also Hancock v. State Board of Insurance*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Company*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). In order to overcome the presumption that the submitted audiotape is public, a governmental body must demonstrate a compelling reason why the information should not be disclosed. *See* Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381. Normally, a compelling reason is shown if the information is confidential by law or if third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). The applicability of section 552.131 of the Government Code provides such a compelling reason. Therefore, we will address your claim under that exception.

Section 552.131 of the Government Code states in pertinent part:

(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.

Gov't Code, § 552.131(a). The submitted audiotape concerns an inmate who is confined in a facility operated by the department. Therefore, we conclude that it is excepted from disclosure under section 552.131. Because we are able to make a determination under section 552.131, we need not address your other claimed exception.

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 150761

Enc. Submitted audiotape

cc: Mr. Thomas Sawyer, Sr.  
1117 ½ Ocean Drive  
Corpus Christi, Texas 78404  
(w/o enclosures)