



November 14, 2001

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

OR2001-5267

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# 154858.

The Texas Department of Criminal Justice (the "department") received requests for videotapes of certain use of force incidents. You contend that one of the requestors has no standing to make a request for information. Furthermore, you indicate that this office has previously ruled that the requested videotapes are excepted from disclosure under former section 552.131 of the Government Code, and you maintain that the videotapes continue to be excepted under that provision. We have also received comments from the requestors. *See Gov't Code § 552.304.* We have considered all of the submitted arguments and reviewed the submitted information.

First, we consider your contention that, under section 552.028 of the Government Code, requestor Linda Hull has no standing to make a request. Section 552.028 of the Government Code provides:

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

While Ms. Hull was confined in a department facility during previous requests made on her behalf, *see* Open Records Letter No. 2000-1624 (2000), she asserts that she completed her sentence on January 2, 2001. Furthermore, you indicate that, at the time of her current request for the videotapes, Ms. Hull was no longer an inmate. Therefore, we do not believe that section 552.028 allows the department to ignore Ms. Hull's current request. Rather, we believe that, as a person no longer confined in a correctional facility, Ms. Hull should be treated as any other member of the public. *See* Gov't Code §§ 552.021, .221.

You indicate that this office previously determined in Open Records Letter No. 2000-0919 (2000) (enclosed) that the same videotapes at issue here were excepted from disclosure under section 552.131 of the Government Code.¹ In that ruling, the requestor was treated as any member of the public would be, not as an individual confined in a correctional facility or a representative of such an individual. This office found that the videotapes requested by the requestor related to an inmate confined in a department facility and therefore the videotapes were excepted from public disclosure under section 552.131. Because you indicate that the information ruled upon in Open Records Letter No. 2000-0919 (2000) is identical to the information responsive to the instant requests and the facts and circumstances surrounding that ruling do not appear to have changed, you may rely upon Open Records Letter No. 2000-0919 (2000) as a previous determination to withhold the information requested in this file. *See* Open Records Decision No. 673 (2001).

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

¹As you correctly note, section 552.131 of the Government Code has been renumbered by the Seventy-seventh Legislature as section 552.134. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2812, § 21.001(53) (to be codified at Gov't Code § 552.134).

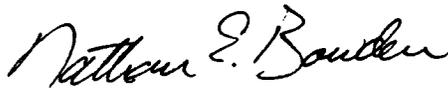
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 154858

Enc: Submitted documents
OR2000-0919

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