



November 19, 2001

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

OR2001-5321

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# 155056.

The Texas Department of Criminal Justice (the "department") received a request for an investigation report regarding "a complaint of the non-issue of sanitary pads for women at the Riverside unit" and "an accounting of the pads ordered and distributed in a 12 month period." The request also seeks all contact telephone numbers for all units under the supervision of Warden Ament. You state that the requested investigation report does not exist.¹ You also state that the number of sanitary pads distributed during the last twelve months will be provided to the requestor. You claim, however, that the requested telephone contact information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.117, and 552.134 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹ We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

² As the department did not submit to this office written comments stating the reasons why sections 552.103 and 552.107 would allow the submitted information to be withheld, we find that the department has waived these exceptions. See Gov't Code §§ 552.301, .302. Further, as the department failed to provide arguments in support of its initial claims under sections 552.101, 552.117, and 552.134, we assume that the department is no longer asserting these exceptions.

Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). The department is a law-enforcement agency for purposes of section 552.108. When this exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986).

This office has concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (holding that section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that section 552.108 excepts sketch showing security measures for execution). You claim that disclosure of the requested telephone extensions could compromise the physical security of the prison unit. Based on your representations and our review of the submitted information, we agree that allowing the public access to the requested telephone numbers would interfere with law enforcement. *Cf.* Open Records Decision No. 508 (1988) (holding that the disclosure of information relating to *past* transfers of inmates would not unduly interfere with law enforcement). Therefore, we conclude that the department may withhold the submitted information under section 552.108(b)(1) of the Government Code.

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); *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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 155056

Enc: Submitted documents

c: Mr. Dwight Rawlinson
2121 South 4th Street
Waco, Texas 76706
(w/o enclosures)