OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

May 20, 2002

Mr. James M. Frazier III
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2002-2690

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163190.

The Texas Department of Criminal Justice (the "department") received a request for a copy of the requestor's personnel file and the daily shift rosters and daily activity logs for a specific time period for a particular prison unit. You claim that the requested information is excepted from disclosure under sections 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted the requestor's personnel file to this office for review. We assume that the requested personnel file has been released to the requestor in compliance with section 552.301 of the Government Code.

In regard to the daily shift rosters and daily activity logs, you claim section 552.108. Section 552.108(b)(1) of the Government Code excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You contend that the requested daily shift rosters and daily activity logs indicate the name and precise placement of each officer within the prison unit as well as whether a particular post was manned on particular dates. You contend that this information, if released, could

"help inmates in their future attempts to circumvent the security of the prison unit," and "could be used to compromise the physical security of the unit." Having reviewed your arguments and the submitted information, we agree that the release of the daily shift rosters would interfere with law enforcement or crime prevention. Accordingly, the department may withhold the requested daily shift rosters from disclosure under section 552.108(b)(1) of the Government Code.[1] However, we do not find that the release of the daily activity logs would interfere with law enforcement or crime prevention and, thus, they are not excepted from disclosure under section 552.108.

You also raise section 552.134 as an exception from disclosure. Section 552.134(a) 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 § 552.134(a). Some of the daily activity logs that you seek to withhold concern inmates who are confined in a facility operated by the department. Section 552.029 of the Government Code does not apply to this information. Accordingly, the department must withhold the daily activity logs that we have marked from disclosure pursuant to section 552.134 of the Government Code. The remainder of the daily activity logs do not concern inmates who are confined in a facility operated by the department and, therefore, cannot be excepted from disclosure pursuant to section 552.134.

In summary, we conclude that: 1) the department may withhold the requested daily shift rosters from disclosure under section 552.108 of the Government Code; and 2) the department must withhold the daily activity logs we have marked from disclosure pursuant to section 552.134 of the Government Code. The remainder of the information must be released.

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

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[1]As we are able to make this determination and you raise section 552.117 only in regard to the daily shift rosters, we need not address your argument under section 552.117 of the Government Code.

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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 163190

Enc: Submitted documents

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(w/o enclosures)