



October 2, 2002

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

OR2002-5560

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# 168895.

The Texas Department of Criminal Justice (the "department") received three requests for copies of information pertaining to uses of force carried out against inmates and former inmates and disciplinary action taken against any department employee relating to any use of force. You indicate that you will provide the requestor with some responsive information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.107, 552.108, 552.117, 552.1175, and 552.134 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted exemplars of responsive information.² We have also considered comments

¹ As the department did not submit to this office written comments stating the reasons why sections 552.103 and 552.107 of the Government Code would allow the remaining requested information, or portions thereof, to be withheld from disclosure, we find that the department has waived these exceptions to disclosure. *See* Gov't Code §§ 552.301, .302. Further, as we did not receive comments stating the reasons why section 552.1175 of the Government Code would allow portions of the remaining requested information to be withheld from disclosure, we assume that this exception to disclosure is no longer being asserted by the department.

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

submitted by a representative of the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

You claim that the requested videotapes pertaining to uses of force carried out against former inmates and portions of the submitted electronic records that are responsive to the request for basic information detailing any uses of force carried out against any department inmate since January 1, 1999 are excepted from disclosure pursuant to section 552.134 of the Government Code. Section 552.134(a) 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). The information at issue concerns inmates and former inmates who are or were confined in a facility operated by the department. However, we note that section 552.134(a) is explicitly made subject to section 552.029 of the Government Code. Basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving an inmate must be released in accordance with section 552.029(8) of the Government Code.³ *See* Gov't Code §§ 552.134(a), 552.029(8). We note that portions of the information at issue concern incidents involving uses of force. Therefore, the department must release all basic information that is contained within the electronic records at issue under section 552.029(8). However, we also find that the department must withhold from disclosure the remaining information in these electronic records and the entirety of the videotapes specifically at issue here pursuant to section 552.134 of the Government Code.

You also claim that the requested videotapes pertaining to uses of force carried out against inmates sentenced to death row and the submitted electronic records detailing basic information regarding the use of force carried out against any death row inmate are excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

³ Basic information under section 552.029(8) includes the time and place of an incident, names of inmates and department officials directly involved in an incident, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding any criminal charges or disciplinary actions filed as a result of the incident. *See* Gov't Code § 552.029(8).

(1) release of the internal record or notation would interfere with law enforcement or prosecution.

Gov't Code § 552.108(b)(1). You state that the videotapes and electronic records pertaining to death row inmates contain sensitive information about such inmates that, if disclosed, could be acquired by other inmates and used to the detriment of prison security. Upon review of the information in the submitted sample, however, we find that you have not demonstrated how the release of this information would interfere with law enforcement. Accordingly, we conclude that the department may not withhold the submitted information relating to death row inmates pursuant to section 552.108(b)(1) of the Government Code.

You also claim, however, that the use of force videotapes pertaining to death-row inmates are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.⁴ Information is protected from disclosure under the common-law right to privacy if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note that this office has determined that the public has a legitimate interest in certain information regarding inmates of the department. *See, e.g.*, Open Records Decision No. 508 (public has legitimate interest in certain information regarding transfers of prisoners). After carefully reviewing your arguments and these videotapes, we find that the public has a legitimate interest in the information contained on the videotapes. Accordingly, we conclude that the department may not withhold any portion of the videotapes specifically at issue here pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You also claim that portions of the electronic records that are responsive to the request for basic information regarding uses of force on inmates sentenced to death row are excepted from disclosure pursuant to section 552.117(3) of the Government Code. Section 552.117(3) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of an employee of the department, regardless of whether the employee complies with section 552.1175 of the Government Code. *See* Gov't Code § 552.117(3). Accordingly, we conclude that under section 552.117(3), the department must withhold from disclosure any social security numbers of department employees that are contained within this particular information.

In summary, the department must release basic information about use of force incidents contained in use of force reports pertaining to non-death row inmates pursuant to

⁴ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information protected from disclosure by the common-law right to privacy.

section 552.029(8) of the Government Code. The department must withhold the remainder of the use of force reports and the corresponding videotapes pertaining to non-death row inmates pursuant to section 552.134 of the Government Code. The social security numbers of department employees in the use of force reports regarding death row inmates must be withheld from disclosure by the department pursuant to section 552.117(3) of the Government Code. The remaining portions of the use of force reports regarding death row inmates and the corresponding videotapes pertaining to death row inmates must be released to the requestor.

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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 168895

Enc. Submitted documents

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