



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 19, 2003

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

OR2003-1091

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# 176730.

The Texas Department of Criminal Justice (the "department") received a request for "a copy of the [department's] rules, policies, and directives governing spiritual advisors [and minister visits] for male and female death row prisoners, and any separate rules promulgated and enforced by the Polunsky Unit administration [regarding spiritual advisors and minister visits]." You state that you have provided some responsive information to the requestor. You also state, however, that the department's execution procedures are also responsive to the request. You claim that this information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As you acknowledge, the department previously requested a decision from this office regarding the public availability of the department's execution procedures. We ruled on that request in Open Records Letter No. 2001-2850 (2001), issued July 2, 2001. In Open Records Letter No. 2001-2850, this office determined that the department's execution procedures document for the Terrell Unit is excepted from disclosure under section 552.108(b)(1) of the Government Code.

You advise that the execution procedures document at issue here contains the same information that the department submitted to this office in connection with the department's

prior request for a decision. You also indicate, however, that while the procedures at issue in the prior ruling pertained to the Terrell Unit, the procedures at issue in the present request pertain to the Polunsky Unit. Thus, the execution procedures document at issue here is not precisely the same execution procedures document that this office addressed in Open Records Letter No. 2001-2850. Accordingly, we determine that the department may not rely on our decision in Open Records Letter No. 2001-2850 as a previous determination regarding the public availability of the department's execution procedures document. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when elements of law, fact, and circumstances have not changed, the records or information at issue are precisely the same records or information previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code, the governmental body that received the request for information is the same governmental body that previously requested and received a ruling from this office, and the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act.) We will therefore address your argument under section 552.108 of the Government Code.

Section 552.108 of the Government Code provides in pertinent part as follows:

(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:

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

This office has determined that certain procedural information may be withheld under section 552.108 of the Government Code or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). To claim this aspect of section 552.108 protection, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention).

You state that the submitted document includes information regarding the management and transport of death row inmates and procedures regarding the execution of condemned offenders. You contend that release of the requested information "could be used to identify and exploit or create weaknesses in death row prison security." Based on your representations and our review of the submitted information, we conclude that the submitted information may be withheld 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); *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,

A handwritten signature in black ink, appearing to read "D. Saldivar", written in a cursive style.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 177078

Enc: Submitted documents

c: Ms. Yolanda M. Torres
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(w/o enclosures)