



The Attorney General of Texas

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Honorable W. J. Estelle, Jr.
Director, Texas Department of
Corrections
Huntsville, Texas

Open Records Decision No. 185

Re: Whether an inmate's correspondence list is public under the Open Records Act.

Dear Mr. Estelle:

You have requested our decision as to whether an inmate's correspondence list is excepted from required public disclosure under section 3(a)(1) of the Open Records Act, article 6252-17a, V.T.C.S., as information deemed confidential by law.

In Open Records Decision No. 100 (1975), we held that information which would reveal the identity of library patrons and the material they had borrowed was excepted from disclosure under section 3(a)(1) of the Open Records Act, as information deemed confidential by constitutional law. It is clear that, ordinarily, the state can have no legitimate interest in the private correspondence of nonincarcerated individuals, and that any governmental requirement which inhibits a person in that regard is constitutionally suspect. See Lamont v. Postmaster General, 381 U.S. 301, 307 (1965). The compelled disclosure of a person's correspondents, like that of an association's membership rolls, is apt to have a repressive effect on the exercise of the individual's first amendment rights. See NAACP v. Alabama, 357 U.S. 449, 462-63 (1958). In Talley v. California, 362 U.S. 60 (1960), the Supreme Court struck down a city ordinance which prohibited distribution of any handbill unless the name and address of the person who prepared, distributed or sponsored it was printed thereon. Such an identification requirement, the Court said, "would tend to restrict freedom to distribute information and thereby freedom of expression." Id. at 64.

The Supreme Court has recognized, of course, that the state has a legitimate interest in the order and security of penal institutions which, if certain criteria are met, may justify the imposition of limited restraints on inmate correspondence. See Procunier v. Martinez, 416 U.S. 396, 412-13 (1974). But the Court has made clear that it is only the governmental interest in maintaining security and order within its prisons, and in promoting the rehabilitation of inmates, that is sufficient to permit the censorship of a

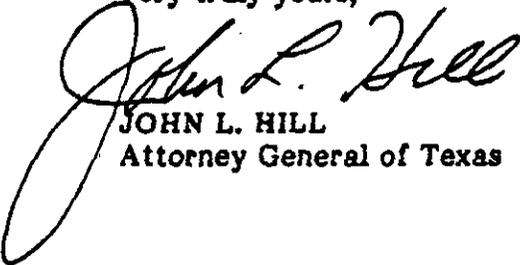
prisoner's mail. Whatever the status of a prisoner's claim to uncensored correspondence with an outsider, the latter's interest in unimpeded communication is clearly grounded in free speech. Id. at 408, 413. See Taylor v. Sterrett, 532 F.2d 462, 480 (5th Cir. 1976) (recognized prisoner's first amendment rights in certain correspondence). In our opinion, the competing interest involved here — the public's right to obtain an inmate's correspondence list — is not sufficient to overcome the first amendment right of the inmate's correspondents to maintain communication with him free of the threat of public exposure. See State v. Ellefson, 224 S.E.2d 666 (S.C. 1976) (disclosure of inmate's mail by jailer to detective violated first and fourth amendment rights).

As the Supreme Court declared in NAACP v. Alabama, *supra*, it is not sufficient to answer that whatever repressive effect may occur is the result of private community pressures rather than state action.

The crucial factor is the interplay of governmental and private action, for it is only after the initial exertion of state power . . . that private action takes hold.

357 U.S. at 463. In the present instance, the state is asked to participate in the repression of first amendment rights by making the information available. In our opinion, it may not do so. It is therefore our decision that an inmate's correspondence list is excepted from disclosure by section 3(a)(1) of the Open Records Act, as information deemed confidential by constitutional law.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


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