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Mr. R. K. Procnier
Director
Texas Department of Corrections
P. O. Box 99
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Open Records Decision No. 428

Re: Whether mail logs of the Texas Department of Corrections which reflect inmates' correspondents are available to the public

Dear Mr. Procnier:

You have asked whether the Texas Department of Corrections must provide one of its inmates with copies of departmental mail logs. In your request letter, you described these logs as follows:

They contain information about private correspondence of other inmates. They are ongoing logs of mail sent by or received by inmates in certain categories, particularly legal, special and media mail as defined in our correspondence rules, and also any certified or registered mail sent or received by the inmate. These logs are maintained for the purpose of insuring the integrity of our mail system by giving us a means of showing that a particular piece of mail was either sent or received.

You contend that these logs contain "confidential inmate information" and are therefore protected from required disclosure by section 3(a)(1) of the Open Records Act, article 6252-17a, V.T.C.S.

Open Records Decision No. 185 (1978) addressed the question of whether section 3(a)(1) embraces an inmate's correspondence list. Relying on Open Records Decision No. 100 (1975), which held that section 3(a)(1) excepts the identity of library patrons and the material that they have borrowed, the decision reasoned as follows:

[O]rdinarily, the state can have no legitimate interest in the private correspondence of non-incarcerated individuals, and . . . any governmental requirement which inhibits a person in that regard is constitutionally suspect. . . . 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. . . . 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. . . . 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. . . . 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. [Citations omitted]. (Emphasis in original).

The decision concluded that an inmate's correspondence list is excepted from required disclosure as "information deemed confidential by constitutional law."

As the foregoing excerpt shows, Open Records Decision No. 185 reasoned that an inmate's correspondence list may be withheld, not because its release would infringe on the inmate's constitutional rights, but because disclosure would tend to discourage outsiders from communicating with the inmate and thereby violate their first amendment rights. Because that decision only held that outsiders have constitutional rights that would be violated by the release of a correspondence list, it does not answer the question of whether the

portions of such a list revealing the names of the inmates who correspond with the outsiders and the nature of their correspondence are excepted from disclosure. In support of the argument that they may be withheld, you assert:

[T]he privacy of the identities of the inmates who are corresponding is just as important to them as is the privacy of the people outside the prison who are sending or receiving mail from them. Indeed, this logging activity reports events that in the general community would not be documented at all. The logging is maintained as a way of preserving the integrity of the correspondence system, but the matters logged are in fact not the public or governmental activity of the agency, but rather the private activities of its inmates.

. . . .

One of the salient requirements of the correspondence rules and a frequent inmate complaint that led to the current correspondence rules (which have been approved by a federal district court) is that no inmate may handle the mail of another, precisely for the fear of intrusion into the privacy of inmates. When one inmate notices that another inmate has been receiving or sending mail, he may ask questions about the content of the mail. The inmate may feel his privacy has been violated.

The Department's stake arises when inmates draw conclusions, based on the questions of other inmates or the presence of inmates' names on the log for certain dates. Having drawn conclusions, they may act on them, sometimes physically.

Open Records Decision No. 185 did not decide whether and to what extent a prison inmate enjoys a constitutional right to correspond with outsiders. The cases it cited, however -- particularly Taylor v. Sterrett, 532 F.2d 462 (5th Cir. 1976) and the Supreme Court decisions cited therein -- establish that individuals do not shed their first amendment right to correspond when they enter prison gates. An inmate's constitutional right to correspond may be limited in particular instances, i.e., when the limitation is necessary to further some substantial governmental interest, Procunier v. Martinez, 416 U.S. 396, 413 (1974), but the right does exist. In our opinion, to apprise other inmates of the names of the individuals with whom a particular inmate corresponds and the nature of that correspondence

could have a deleterious effect on the inmate's ability to exercise this right. As you have observed, intimidation or even physical harm could well befall an inmate who is deemed by other inmates to be corresponding with the wrong people.

If the department had a valid reason for doing so, it could limit an inmate's right to correspond with outsiders. In this instance, however, the department seeks not to limit, but to preserve that right. Thus, in addition to the legitimate interest that departmental inmates have in being able to correspond with outsiders free of the threat of harassment, another interest that must be weighed in this instance is the department's interest in enforcing its correspondence rules -- rules which are designed to maintain order within its walls and have been approved by a federal court. Pitted against these two interests is the inmate's interest in obtaining information from the department, a "governmental body" subject to the Open Records Act.

Open Records Decision No. 185 concluded that the right of an inmate's correspondents to maintain communication with the inmate free from the threat of public exposure outweighed the public's interest in obtaining a list of those correspondents. It held that the former interest is grounded in the first amendment and that the correspondence list is therefore protected by constitutional law. In this instance, we conclude that the interest of prison inmates in being able to correspond with outsiders free from the threat of harassment by other inmates -- an interest which has constitutional underpinnings -- outweighs the inmate/requestor's interest in obtaining the department's mail logs. The department's interest in enforcing its correspondence rules and thereby maintaining order in its prisons is another reason justifying non-disclosure.

For the foregoing reasons, we conclude that the department's mail logs are protected by section 3(a)(1), as information deemed confidential by constitutional law.

Very truly yours,



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