



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 30, 1996

Ms. Mary Lou Flynn-Dupart
Jackson & Walker, L.L.P.
P.O. Box 4771
Houston, Texas 77210-4771

OR96-0642

Dear Ms. Flynn-Dupart:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37596.

As counsel for Tri-County Mental Health Mental Retardation Services ("Tri-County"), you have provided us with the following information:

Ruth Hickman is the mother of a Texas Department of Corrections inmate, Charlie Robbins. Ms. Hickman has requested a copy of the resignation letter of Kay A. Martin, a former employee of Tri-County. The same information relating to Ms. Martin has previously been requested by Michael Noonan, who is currently in prison (T[D]CJ# 619,340). Tri-County did not furnish Mr. Noonan with a copy of Ms. Martin's resignation based on Attorney General Opinion OR95-343. Inmate Noonan is presently residing at the Winn unit. Also assigned to the Winn unit is Charlie Robbins.

Kay A. Martin was a critical witness in the criminal trial of Mr. Robbins, who is currently serving a 75 year sentence for kidnapping and aggravated sexual assault. Ms. Martin is justifiably terrified of Mr. Robbins and Mr. Noonan having access to any portion of her personnel file. She has requested that Tri-County not turn over any such records to Mr. Robbins' mother, Ruth Hickman. Ms. Martin believes that the request is meant to harass and intimidate her. She fears that allowing either of these two inmates to receive a copy of her resignation [through] a third party like Ms. Hickman will provide them with an accurate copy of her signature which could allow it to be forged for any number of purposes.

You suggest that Tri-County, the custodian of the records, may ignore or otherwise refuse to comply with the request pursuant to recently enacted section 552.027 of the Government Code, which permits governmental bodies to decline to accept or comply with requests for information submitted by inmates. Section 552.027 provides the following:

(a) A governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility.

(b) Subsection (a) does not prohibit a governmental body from disclosing to an individual described by that subsection information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" has the meaning assigned by Section 1.07(a), Penal Code.¹

Gov't Code § 552.027 (as added by Acts 1995, 74th Leg., ch. 302, §1) (footnote added). We understand you to suggest that, because Ms. Hickman, the person submitting the request, is asking on behalf of a person who is in prison, Ms. Hickman is acting as an inmate's *agent* and that, therefore, Tri-County may decline to comply with the request. We agree with your construction for two reasons.

First, we are bound to construe statutes in ways so as not to produce an absurd or unreasonable result. *City of Wilmer v. Laidlaw Waste Sys. (Dallas), Inc.*, 890 S.W.2d 459, 465 (Tex. App.--Dallas 1994), *aff'd*, 904 S.W.2d 656 (Tex. 1995); *see State Highway Dept. v. Gorham*, 162 S.W.2d 934 (Tex. 1942); *Anderson v. Penix*, 161 S.W.2d 455 (Tex. 1942). A construction of section 552.027 that would permit a governmental body to decline to comply with a request submitted by an inmate, on the one hand, but

¹Section 1.07(a)(14) of the Penal Code provides:

"Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

that would require the governmental body to comply with one submitted by an inmate's agent, on the other, is absurd on its face. We decline to adopt such a construction.

Second, construing the provision to require a governmental body to comply with a request submitted by an inmate's agent while at the same time permitting that governmental body to ignore a request submitted by the inmate himself would entail a manifest circumvention of the provision and frustrate the obvious intent of the legislature when it enacted section 552.027. A bill analysis for House Bill No. 949 describes the evil that the legislation was designed to prevent:

Currently, Texas inmates are able to receive information through Chapter [552], Government Code (Open Records Act). Through this avenue, inmates have been using information obtained through Chapter [552] to file bogus income tax returns on correctional officers, harass nurses at their home addresses, and send mail to the homes of Texas Department of Criminal Justice employees.

Tex. Sen. Criminal Justice Comm., Bill Analysis, Tex. H.B. 949, 74th Leg., R.S. (1995) (quoting from "Background") (available through Senate Research Center). If an agent of an inmate were permitted to avail himself of the Open Records Act to obtain information on behalf of an inmate who otherwise would be prevented by section 552.027 from obtaining the information, the manifest intention of the legislature would be thwarted. *See Crimmins v. Lowry*, 691 S.W.2d 582, 584 (Tex. 1985) ("legislative intent is the law itself, and must be enforced if determined although it may not be consistent with the strict letter of the statute").

We conclude that section 552.027 of the Government Code, which permits a governmental body to decline to accept or comply with a request for information that is submitted by an individual who is imprisoned or confined in a correctional facility, also permits a governmental body to decline to accept or comply with a request that is submitted by that person's agent.

We are accordingly resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 of the Government Code regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Sandra L. Coaxum
Chief, Open Records Division

Ref: ID# 37596

Enclosure: Submitted document

cc: Ms. Ruth Hickman
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(w/o enclosure)