



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1996

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-1029

Dear Mr. Pigott:

Your predecessor asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 27972.

The Texas Department of Public Safety (the "department") received a request for information from an inmate incarcerated in a federal penitentiary in Kansas. You seek to withhold identifying information about a confidential informant under sections 552.101 and 552.108 of the Government Code.

The Texas Legislature recently enacted certain legislation that affects the ability of incarcerated individuals to obtain, under the Open Records Act, information held by governmental entities in Texas. Section 1 of House Bill 949 amended the Open Records Act by adding section 552.027 of the Government Code, which provides as follows:

Sec. 552.027. REQUEST FOR INFORMATION FROM INCARCERATED INDIVIDUAL. (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.

H.B. 949, 74th Leg., R.S. With regard to the effective date of this amendment, section 8 of House Bill 949 specifically provides:

The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

We note that the incarcerated individual seeking the information made the open records request prior to the effective date of House Bill 949. However, we conclude that the fact that the current open records request was made prior to the effective date of House Bill 949 has no effect on your agency's right to refuse to "accept or comply with" the current request. Section 552.303 of the Government Code provides in pertinent part:

A governmental body that requests an attorney general decision under this subchapter shall supply to the attorney general, in accordance with Section 552.301, the specific information requested. The governmental body may not disclose the information to the public or to the requestor until the attorney general makes a final determination that the information is public or, if suit is filed under this chapter, until a final determination that the information is public has been made by the court with jurisdiction over the suit

An individual's right to information requested under the Open Records Act vests only upon the final determination by either the attorney general or a court that the information is public. *See generally Houston Independent School District v. Houston Chronicle Publishing Company*, 798 S.W.2d 580, 588-89 (Tex. App.--Houston [1st Dist.] 1990, writ denied). Because the requestor's right to the information at issue did not vest prior to the enactment of House Bill 949, we conclude that the newly enacted section 552.027 is applicable to this request.

Although the individual making the request is confined in a federal correctional facility and, therefore, does not appear to fall within the definition of an individual who is imprisoned or confined in a correctional facility as contemplated by section 552.027(c), we conclude, for two reasons, that section 552.027 is nevertheless applicable in this instance.

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 confined in a

correctional facility as defined by section 1.07(a)(14) of the Penal Code, on the one hand, but that would require the governmental body to comply with one submitted by an inmate who is incarcerated in a federal correctional facility outside the state, 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 who is incarcerated in a federal correctional facility outside the state while at the same time permitting that governmental body to ignore a request submitted by an inmate incarcerated in a correctional facility as defined by section 1.07(a)(14) of the Penal Code would entail a manifest circumvention of the provision and frustrate the obvious intent of the legislature when it enacted section 552.027. 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 as defined by section 1.07(a)(14) of the Penal Code, also permits a governmental body to decline to accept or comply with a request that is submitted by an inmate who is incarcerated in a federal correctional facility outside the state. Accordingly, we conclude that section 552.027 gives you the discretion to either comply with this open records request or deny it in its entirety.¹

We are 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 regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

¹As we conclude that you have the discretion to comply with or deny this request in its entirety under section 552.027, we need not consider the exceptions you raise.

Ref: ID# 27972

Enclosures: Submitted documents

cc: Mr. Silvio Valdez # 42241-080
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(w/o enclosures)