



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1998

Mr. Michael J. West
Assistant District Attorney
Burleson and Washington Counties
Twenty-First Judicial District
P.O. Box 303
Brenham, Texas 77833

OR98-1152

Dear Mr. West:

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# 115131.

The Washington County District Attorney (the "district attorney") received an open records request from the sister of an incarcerated individual. You suggest that the district attorney need not comply with the request pursuant to section 552.028 of the Government Code, which permits governmental bodies to decline to accept or comply with requests for information submitted by inmates.¹ Section 552.028 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.

¹You also state that the requestor "has not stated a legitimate reason for disclosure in her request." We note, however, that the Open Records Act prohibits consideration of the motives of the requesting party. See Gov't Code §§ 552.222(b) (governmental body may not inquire into purpose of open records request); 552.223 (uniform treatment of requests for information). See also Open Records Decision Nos. 542 (1990), 508 (1988). Consequently, the requestor's motives in requesting the information are not a factor in our determination as to whether the district attorney must release the information at issue.

Gov't Code § 552.028. We understand you to suggest that, because the requestor is asking for information on behalf of an incarcerated person, the requestor is acting as the inmate's *agent* and that the district attorney therefore 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 552.028 that would permit a governmental body to decline to comply with a request submitted by an inmate, on the one hand, but 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 552.028. 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 552.028 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 552.028 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 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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Kay Hastings". The signature is written in a cursive, flowing style.

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/rho

Ref.: ID# 115131

cc: Ms. Edie Cain
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