Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 21, 1998

Mr. Jack Harwell
Sheriff
County of McLennan
5th and Washington
Waco, Texas 76701

OR98-1292

Dear Mr. Harwell:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115189.

McLennan County (the "county") received from an inmate a request for all of his medical records to date. You assert that the county does not have to accept or comply with this request for information, because the requestor is an inmate confined in a correctional facility. Section 552.028 of the Government Code provides that

> (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 a governmental body pertaining to that individual.
>
> (c) In this section, "correctional facility" has the meaning assigned by Section 1.07(a), Penal Code.

We agree that, pursuant to section 552.028, the county is not required to accept or comply with an open records request from a requestor who is incarcerated in a correctional facility. However, because the request here is for the inmate's own medical records, we do not believe section 552.028 is controlling, as we will explain.

The release of medical records is governed by section 5.08 of V.T.C.S. article 4495b, the Medical Practice Act (the "MPA"), which provides:

> (b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.
>
> (c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 (1990) at 7. The medical records requested by the inmate may be released only in accordance with these provisions of the MPA. Open Records Decision No. 598 (1991); *see also* Attorney General Opinion MW-381 (1981).

Texas General Services Commission sets rules specifying the methods and procedures for determining costs. Gov't Code § 552.262. Consequently, we agree with your proposal to contact the Texas General Services Commission concerning the costs involved in providing copies of the medical records information to inmates, as well as possible strategies of cost recoupment.

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,

Janet Y. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 115189

Enclosures: Submitted documents

cc: Mr. John L. Bagby
McLennan County Jail
Tank C-6
3201 E. Highway 6
Waco, Texas 76705
(w/o enclosures)