



February 29, 2000

Ms. Regina T. Grimes  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 13401  
Austin, Texas 78711

OR2000-0764

Dear Ms. Grimes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Texas Government Code. Your request was assigned ID#132515.

The Texas Department of Criminal Justice ("TDCJ") received a request for information regarding a particular inmate. You assert that you need not comply with the request under section 552.028 of the Government Code.

The Seventy-sixth Legislature amended section 552.028 to provide:

(a) A governmental body is not required to accept or comply with a request for information from:

- (1) an individual who is imprisoned or confined in a correctional facility; or
- (2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028. You submit information showing that the requestor, the inmate's wife, is making the request on behalf of the inmate. Along with her request, Mrs. Martinez submits a document naming her as the inmate's representative. You also indicate that you

have no information to allow you to conclude that the requestor is the inmate's attorney. You further advise that the inmate to which the request relates is currently incarcerated in the Texas Department of Corrections, specifically in "TDCJ John B. Connally Unit, Unit Code CY." You contend that, because the requestor is acting as the inmate's agent, you may decline to comply with the request. Consequently, we agree that, in this case, section 552.028 of the Government Code permits you to decline to accept or comply with the request.

We note that it is within your discretion to release the requested information. Should you choose to comply with this request for information, you must not release information confidential by law. Social security numbers may be confidential if they were obtained or are maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994). In addition, TDCJ must withhold drivers' license numbers under section 552.130 as they are information that relates to a motor vehicle operator's or driver's license issued by an agency of this state.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/CHS/ljp

Ref: ID# 132515

Encl. Submitted documents

cc: Ms. Rosie C. Martinez  
238 Barbuda Drive  
San Antonio, Texas 78227  
(w/o enclosures)