



May 19, 2000

Ms. Regina Grimes
Office of the General Counsel
P.O. Box 13401, Capitol Station
Austin, Texas 78711

OR2000-1999

Dear Ms. Grimes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135986.

The Texas Department of Criminal Justice (the "department") received a request for three items of information relating to a specific inmate. You claim that the requested information is excepted from disclosure under sections 552.028, 552.101, 552.103, and 552.108 of the Government Code. You have submitted for our review representative samples of information that is responsive to the request.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.028 of the Government Code generally limits a governmental body's obligation to respond to public information requests from an incarcerated individual or that individual's agent. Section 552.028 provides:

(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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

(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.

Here, the requestor states that he is making the request for information in concert with his brother, who is confined in a correctional facility. You contend that, because the requestor is acting as the inmate's agent, you may decline to comply with the request pursuant to section 552.028(a)(2). We agree that section 552.028(a)(2) of the Government Code permits you to decline to accept or comply with a request for information that is submitted by person's agent while that person is imprisoned or confined in a correctional facility. Therefore, pursuant to section 552.028, you need not comply with this request. Because our determination under section 552.028 is dispositive, we do not address your claimed exceptions to the disclosure of the submitted information.

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).

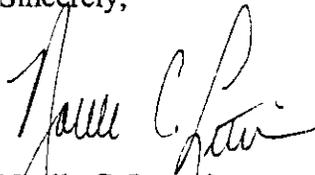
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Department 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,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

ncl/nc

Ref: ID# 135986

Encl. Submitted documents

cc: Mr. Kevin Sheehan
493 Christie Road
Diana, Texas 75640
(w/o enclosures)