



September 7, 2000

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2000-3457

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 138889.

The Department of Criminal Justice (the "department") received a request for, among other things, information relating to the transfer of the requestor's son, an inmate. You claim that the information is excepted from disclosure under sections 552.101, 552.107, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have raised section 552.028, which 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 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.

(c) In this section, 'correctional facility' has the meaning assigned by Section 1.07(a), Penal Code.

Gov't Code § 552.028. You represent that the requestor is proceeding on behalf of her son, "an individual who is imprisoned or confined in a correctional facility" and that therefore, the department is under no obligation to respond to the request. We agree that if the department finds that the requestor is acting as her son's agent, the Act gives the department the discretion to either "comply with" this request or deny it in its entirety. We note for the department's consideration, however, that the requestor has submitted an affidavit emphatically stating that she is not acting as her son's agent. Should you still find that the requestor is acting on her son's behalf, the department may choose to deny the request under section 552.028.

We address section 552.131 of the Government Code should the department choose to comply with the request. Section 552.131(a) relating to department inmates states in pertinent part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

(b) Subsection (a) does not apply to:

(1) statistical or other aggregated information relating to inmates confined in one or more facilities operated by or under a contract with the department; or

(2) information about an inmate sentenced to death.

We find that the submitted information is about an inmate who is confined in a facility operated by the department. Moreover, subsection (b) of section 552.131 does not apply to the submitted information. Finally, section 552.029 does not apply to the submitted information.¹ Therefore, the department must withhold the information under section 552.131. Because section 552.131 is dispositive, we do not address your other claimed exceptions.

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.

¹Section 552.029 lists eight specific types of information about a department inmate that must be released. In this instance, section 552.029 is not triggered due to the nature of the request and the content of the responsive information.

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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 138889

Encl. Submitted documents

cc: Ms. Mary F. Rugg
3220 Voss Drive
El Paso, Texas 79936-1915
(w/o enclosures)