



July 18, 2001

Ms. Jan Clark  
Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2001-3116

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149610.

The Houston Police Department (the "department") received a request for any and all retrievable files as well as all documents contained within those files pertaining to a named individual. You seek our opinion as to whether you may decline to accept or comply with the request for information under section 552.028 of the Government Code. Alternatively, you claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and have reviewed the submitted information.

Section 552.028 of the Government Code provides as follows:

(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 inform us that the named individual whose records have been requested is an inmate of the Texas Department of Criminal Justice Segovia Unit. You state that "taken in its totality the request appears to have been written by one person, and then sent to be signed and mailed by the requestor (ie. the time delay between the date on the letter and its arrival at [the department]; the underlined and marked signature line. The city believes the requestor is acting as an agent for an individual who is imprisoned . . . in a correctional facility." You also note that the requestor states that the requested documents are to be used for an "out-of-time appeal."<sup>1</sup> Based on your representations and our review of the submitted request, we conclude that, in accordance with section 552.028(a)(2) of the Government Code, the department need not comply with the instant request for information. *See also Hickman v. Moya*, 976 S.W.2d 360 (Tex. App.--Waco 1998, pet. denied), *Moore v. Henry*, 960 S.W.2d 82 (Tex. App. -- Houston [1<sup>st</sup> Dist.] 1996, no writ); Open Records Decision No. 656 (1997) (construing statutory predecessor). As we are able to dispose of this matter under section 552.028, we need not address your arguments under sections 552.101 and 552.108.

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

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<sup>1</sup>We note that the Public Information Act is concerned with the release of information to the public in general and forbids any consideration of the purpose for which such information will used. Gov't Code § 552.222(b). However, we believe in this case that the statement by the requestor concerning the use to be made of the requested documents is evidence that the requestor is acting as the agent of the incarcerated individual.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 149610

Enc. Submitted documents

c: Ms. Kristy Pyle  
1064 Pine Street  
Zanesville, Ohio 43701  
(w/o enclosures)



July 18, 2001

Ms. J. Middlebrooks  
Assistant City Attorney  
City of Dallas  
2014 Main Street, Room 501  
Dallas, Texas 75201

OR2001-3117

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149499.

The Dallas Police Department (the "department") received a request for "copies of any Internal Affairs investigations or other internal discipline involving PO Ryan T. Jones #6802 since Jan. 1, 1998." You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.117, 552.119 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We first note that section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The submitted documents contain information that is confidential under the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

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<sup>1</sup>We assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.