



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 25, 2003

Ms. Dana W. Cooley
District Attorney
132nd Judicial District
1806 25th Street, Suite 302
Snyder, Texas 79549-2530

OR2003-2797

Dear Ms. Cooley:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 182275.

The District Attorney for the 132nd Judicial District for Scurry and Borden Counties (the "District Attorney") received a request for the police report in a case involving Mr. Ernesto Esteban Ramirez Anguiano. You contend that under section 552.028 of the Act, the District Attorney is not required to respond to the request for information. You also claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered your claims and reviewed the submitted information.

Section 552.028, which concerns requests for information from an incarcerated individual, reads 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" means a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Thus, under section 552.028, a governmental body has discretion to release requested public information to an incarcerated individual or to an incarcerated individual's agent. *See Hickman v. Moya*, 976 S.W.2d 360 (Tex, App.–Waco,1998), *cert. denied*, 527 S.S. 1009 (1999). You state that the District Attorney is relying on this provision to withhold the requested information because you have determined that the requestor is an agent of an individual who is imprisoned in the Scurry County Jail, Mr. Ramirez. You contend that the requestor was acting as Mr. Ramirez's agent because the requestor states that he is providing assistance to Mr. Ramirez and because the requestor's conversations with you were similar to conversations that you would have with a defense attorney. You state that

I have also learned that the Consulado General De Mexico has provided investigators for the benefit of the defendant and the attorney representing him in the murder case. They have interviewed witnesses in the criminal case and provided translators. They have made the defendant's defense attorney aware of additional witnesses that were unknown to law enforcement officers, helped the defense attorney locate additional witnesses, interviewed those witnesses and even determined who has possession of the murder weapon that deputies were unable to locate at the scene of the crime. They are clearly acting on behalf of the defendant in the criminal case.

While the information you have submitted supports the conclusion that the requestor seeks the information in order to assist Mr. Ramirez in his defense in the criminal case, we do not believe the requestor in this case is Mr. Ramirez's agent for purposes of section 552.028, as we will explain.

Section 552.028 does not define "agent" but excludes an individual's attorney from its meaning. We will consider the common and ordinary meaning of "agent." *See* Gov't Code § 311.011 (concerning rule of construction that statutory words will be given their ordinary meaning). One dictionary defines agent as "one that acts or has the authority to act; one that acts as the representative of another." WEBSTER'S II NEW COLLEGE DICTIONARY (2001). Another defines agent as "one who is authorized to act for or in the place of another."

MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 10TH ed. (1994). In considering the legal meaning of "agent," a court has held that if a person acts for another, but is not under that person's control, the relationship of agency does not exist. *See Walker v. Federal Kemper Life Assur. Co.*, 828 S.W.2d 442 (Tex. App.-San Antonio 1992, writ denied). Thus, we believe that, as commonly used, "agent" means one who acts for another under the other's authority and control.

We understand that Mr. Ramirez is a Mexican national. The requestor, a Vice Consul of Mexico, states that he requests the information in order to provide consular assistance to Mr. Ramirez. As the requestor in his capacity as a consul of Mexico acts under the authority of the country that commissioned him, it is difficult to conclude that the requestor is acting under the authority and control of Mr. Ramirez so as to make him Mr. Ramirez's agent for purposes of section 552.028.

The legislature has directed us to liberally construe the Act in favor of granting a request for information. Gov't Code § 552.001(b). We therefore conclude that the requestor is not an inmate's agent for purposes of section 552.028. Consequently, the District Attorney may not rely on section 552.028 to withhold the requested information in these circumstances.

Next, we turn to the exceptions you raise. The Act requires a governmental body that seeks to withhold requested information to ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. Gov't Code § 552.301(a). The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request. *See id.* § 552.301(b). The District Attorney received the request on October 18, 2002. This office received the District Attorney's request for a ruling on March 31, 2003. Thus, the District Attorney has not complied with the Act's procedural requirements. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). A compelling reason exists when the information is deemed confidential by some other source of law or when third party interests are at stake. *See* Open Records Decision No. 150 (1977).

You contend that because the Act does not require governmental bodies to request an open records ruling from the attorney general about whether someone is acting as an agent of a confined person, and because you in good faith relied on section 552.028 to not respond to the request, the section 552.301 deadlines should not apply to the District Attorney in this

case. However, the Act provides no provision for making the deadlines inapplicable to a governmental body that mistakenly and in good faith relies on section 552.028 not to timely seek a ruling from this office. Rather, the Act provides that the standard for overcoming the presumption of openness is a compelling reason standard. Gov't Code § 552.302. We do not believe the exceptions you raise present compelling reasons to overcome the presumption that the information is public. *See* Open Records Decision Nos. 586 (1991), 473 (1987). Thus, we conclude that the information must be released to the requestor with the following exception.

The information contains a Texas driver's license number. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

The District Attorney must withhold the Texas driver's license under section 552.130. The District Attorney must release the remaining information to the requestor.

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 Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 182275

Enc: Submitted documents

c: Mr. Luis Benjamin Lara
Vice Consul of Mexico
Consulado General de México
855 North Stemmons Freeway
Dallas, Texas 75247
(w/o enclosures)