ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2005

Mr. Danny Daniel
Chief Deputy
Erath County Sheriff's Department
1043 Glen Rose Highway
Stephenville, Texas 76401

OR2005-05766

Dear Mr. Daniel:

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# 230698.

The Erath County Sheriff's Department (the "department") received a request for medical information pertaining to a particular inmate. You claim that you need not comply with the request. We have considered your arguments and reviewed the submitted information.

Section 552.028 of the Government Code 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.

Gov't Code § 552.028. Thus, under section 552.028, a governmental body has discretion to release requested public information to an individual who is imprisoned or confined in a correctional facility or to such an individual's agent. *See Hickman v. Moya*, 976 S.W.2d 360 (Tex. App.—Waco,1998). You inform us that the present request was made by an individual who is imprisoned or confined in a correctional facility. We therefore agree that section 552.028 is applicable and conclude that the department may decline to accept or comply with the request.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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,

Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/seg

Ref: ID# 230698

Enc. Submitted documents

c: Mr. Zachary Tyler Smith
TDCJ #1109116
McConnell Unit
3001 South Emily Drive
Beeville, Texas 78102
(w/o enclosures)

Ms. Shirley Smith
500 King George Drive #612
Fort Worth, Texas 76112
(w/o enclosures)

Ms. Karla O'Connor
324 Tims Road
Crowley, Texas 76036-3701
(w/o enclosures)