



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2006

Ms. Patricia E. Carls
Brown & Carls, LLP
106 East Sixth Street, Suite 550
Austin, Texas 78701

OR2006-00604

Dear Ms. Carls:

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# 240631.

The Georgetown Police Department (the "department"), which you represent, received a request for physical items and "[all] information" related to the criminal investigation of a named individual. You state that you do not maintain information that is responsive to several portions of the request. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). You further contend that any requested physical items are not subject to the Act.¹ You claim that the department is not required to comply with the remainder of the request under section 552.028 of the Government Code. You also argue that some of the submitted information was obtained by the department pursuant to grand jury subpoenas and therefore, such information is not subject to the Act. In the alternative, you claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

You argue that the department is not required to comply with the request under section 552.028 of the Government Code. Section 552.028 of the Government Code provides:

¹This office has ruled that tangible physical items are not "information" as that term is contemplated under the Act. See, e.g., Open Records Decision No. 581 (1990). Thus, we find that any responsive tangible physical evidence that is maintained by the department is not public information as that term is defined in section 552.002 of the Government Code. Consequently, we agree that the department is not required to release such tangible evidence to the requestor under the Act. See Gov't Code §§ 552.002, .021.

(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 incarcerated individual or to an incarcerated individual's agent. *See Hickman v. Moya*, 976 S.W.2d 360 (Tex, App.—Waco,1998). Whether an individual is acting as an agent of an imprisoned individual is a factual determination that this office cannot make in the open records process. Open Records Decisions Nos. 554 (1990), 552 (1990). Consequently, we must rely on the representations of the governmental body requesting our opinion. *Id.*

You state that the individual at issue has been imprisoned after agreeing to plead guilty to injury to a child. You represent to us that the requestor is the girlfriend of the inmate and "does not believe [the inmate], the father of her child, the man living with her at the time of her child's death, is guilty," and is acting as his agent. You further provide documentation indicating that the Williamson County District Attorney believes the requestor is acting as the inmate's agent because she informed prosecutors that she supported the defendant, visited the inmate at least sixty times, informed the department she would not help their case, and previously obtained medical records to provide to the inmate's attorney in order to assist in his defense. Based on the department's and the district attorney's representations, we conclude that section 552.028 is applicable in this instance. Therefore, the department may decline to accept or comply with this request for information. As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure.

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 Office of the Attorney General 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/segH

Ref: ID# 240631

Enc: Submitted documents

c: Ms. Candra Walker
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(w/o enclosures)