



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 23, 2008

Ms. Laura Garza Jimenez
County Attorney
Nueces County Courthouse
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2008-13131

Dear Ms. Jimenez:

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# 322702.

The Nueces County Sheriff's Department (the "department") received a request for information pertaining to the investigation and prosecution of a named individual. You assert that the department is not required to comply with the request pursuant to 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 reviewed the submitted information.

Section 552.028 provides in relevant part the following:

(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.

...

(c) In this section, "correctional facility" means:

- (1) a secure correctional facility, as defined by Section 1.07, Penal Code;
- (2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and
- (3) 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.

Gov't Code § 552.028(a), (c). A "secure correctional facility" is defined as:

- (A) a municipal or county jail; or
- (B) a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice.

Penal Code § 1.07(a)(45)(A)-(B). You assert that the requestor is residing in a half-way house, a confinement facility as defined by section 1.07(a)(45)(B) of the Penal Code. We agree that, although the requestor is no longer imprisoned, his release "was not to the general public but was rather to a different form of confinement, albeit with certain additional liberties." See *Jackson v. Johnson*, 475 F.3d 261 (5th Cir. 2007). Based on your representations and our review of the information at issue, we agree that the requestor is "confined in a correctional facility" as it is understood by the Code and that section 552.028 is applicable in this instance. Therefore, we conclude that the department need not comply with the request.¹

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

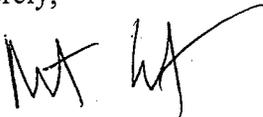
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/jb

Ref: ID# 322702

Enc. Submitted documents

c: Mr. Kenneth Ray Clark
10950 Beaumont Highway
Houston, Texas 77078
(w/o enclosures)