



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 29, 2012

Mr. Russell D. Thomason  
Criminal District Attorney  
91<sup>st</sup> Judicial District  
100 West Main, Suite 204  
Eastland, Texas 76448

OR2012-03156

Dear Mr. Thomason:

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# 446743.

The Eastland County District Attorney’s Office (the “district attorney”) received a request for all documents related to a named individual’s conviction for murder, to exclude attorney work product. You assert the district attorney need not comply with the request pursuant to section 552.028 of the Government Code. We have considered your arguments. We have also received and considered comments submitted by a representative of the requestor. *See* Gov’t Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Section 552.028 of the Government Code provides, in relevant part:

(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 [the Act].

(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(a)-(b). You state the individual whose information is at issue is an inmate confined in a correctional facility, and we understand you to argue the requestor made the present request as a representative of this incarcerated individual. You further state that you have been unable to determine if the requestor is an attorney representing the inmate whose information is at issue. However, as you have not provided any additional information establishing the requestor is in fact acting as an agent of the inmate, we cannot conclude section 552.028 is applicable in this instance. Accordingly, the district attorney must comply with the request.

We note section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, the district attorney received the instant request for information at issue on December 14, 2011. However, as of the date of this ruling, you have not submitted a copy or representative sample of the specific information requested. Therefore, we find the district attorney has failed to comply with the requirements of section 552.301.

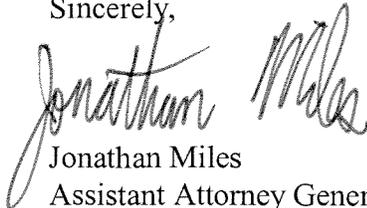
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). We note that a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). However, as you raise no exceptions to the disclosure of the requested information, it must be released to the requestor. If you believe the requested information is confidential and may not lawfully be

released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned above the typed name and title.

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 446743

c: Requestor