Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 23, 1995

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR95-450

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28048.

Your agency received an open records request from an individual incarcerated in a correctional facility. The Texas Legislature recently enacted certain legislation that affects the ability of incarcerated individuals to obtain, under the Open Records Act, information held by governmental entities in Texas. Section 1 of House Bill 949 amended the Open Records Act by adding section 552.027 of the Government Code, which provides as follows:

> Sec. 552.027. REQUEST FOR INFORMATION FROM INCARCERATED INDIVIDUAL. (a) A governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility.
>
> (b) Subsection (a) does not prohibit a governmental body from disclosing to an individual described by that subsection information held by the governmental body pertaining to that individual.
>
> (c) In this section, 'correctional facility' has the meaning assigned by Section 1.07(a), Penal Code.

H.B. 949, 74th Leg., R.S. With regard to the effective date of this amendment, section 8 of House Bill 949 specifically provides:

> The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, *and that this Act take effect and be in force from and after its passage*, and it is so enacted. (Emphasis added.)

We note that the incarcerated individual seeking the information made the open records request prior to the effective date of House Bill 949. However, we conclude that the fact that the current open records request was made prior to the effective date of House Bill 949 has no effect on your agency's right to refuse to "accept or comply with" the current request. Section 552.303 of the Government Code provides in pertinent part:

> A governmental body that requests an attorney general decision under this subchapter shall supply to the attorney general the specific information requested and shall not disclose the information to the public or to the party requesting the information *until the attorney general makes a final determination* or, if suit is filed under this chapter, until a final decision has been made by the court with jurisdiction over the suit . . . . (Emphasis added.)

An individual's right to information requested under the Open Records Act vests only upon the final determination by either the attorney general or a court that the information is public. *See generally Houston Independent School District v. Houston Chronicle Publishing Company*, 798 S.W.2d 580, 588-89 (Tex. App.--Houston [1st Dist.] 1990, writ denied). Because the requestor's right to the information at issue did not vest prior to the enactment of House Bill 949, we conclude that the newly enacted section 552.027 controls. The individual requesting the information at issue is "an individual who is imprisoned or confined in a correctional facility." Accordingly, the Open Records Act gives your agency the discretion to either "comply with" this open records request or deny it in its entirety.

Yours very truly,

Open Government Section
of the Opinion Committee

Ref.: ID# 28048

Enclosures: Submitted documents

cc: Mr. Kelvin Willis
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