



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 7, 1997

Ms. Y. Qiyamah Taylor
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR97-0494

Dear Ms. Taylor:

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# 104473.

The Houston Police Department (the "department") received an open records request for various offense reports pertaining to the requestor's sons, who are currently incarcerated in the Texas prison system. You seek to withhold the requested information pursuant to section 552.108 of the Government Code. Additionally, you contend the department is authorized not to comply with the request pursuant to section 552.027 of the Government Code.

Section 552.108 of the Government Code exempts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Because the information at issue comes within the purview of section 552.108, we conclude that most of the requested information may be withheld under this section.

We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536

S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, the department may not withhold, pursuant to section 552.108, the types of information that are considered to be front page offense report information.

On the other hand, as noted above, the requestor of the information at issue is the mother of the three incarcerated individuals who are the subjects of information at issue. You contend that the department may ignore or otherwise refuse to comply with the request pursuant to recently enacted section 552.027 of the Government Code, which grants to governmental bodies the discretion to decline to accept or comply with requests for information submitted by inmates. Section 552.027 provides the following:

(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.¹ [Emphasis added.]

¹Section 1.07(a)(14) of the Penal Code provides:

"Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

Gov't Code § 552.027 (as added by Acts 1995, 74th Leg., ch. 302, § 1) (footnote added). You state that the requestor is acting as the inmates' agent and contend that the department may decline to comply with the request. We agree with your construction for two reasons.

First, we are bound to construe statutes in ways so as not to produce an absurd or unreasonable result. *City of Wilmer v. Laidlaw Waste Sys. (Dallas), Inc.*, 890 S.W.2d 459, 465 (Tex. App.--Dallas 1994), *aff'd*, 904 S.W.2d 656 (Tex. 1995); *see State Highway Dep't v. Gorham*, 162 S.W.2d 934 (Tex. 1942); *Anderson v. Penix*, 161 S.W.2d 455 (Tex. 1942). A construction of section 552.027 that would permit a governmental body to decline to comply with a request submitted by an inmate, on the one hand, but that would require the governmental body to comply with one submitted by an inmate's agent, on the other, is absurd on its face. We decline to adopt such a construction.

Second, construing the provision to require a governmental body to comply with a request submitted by an inmate's agent while at the same time permitting that governmental body to ignore a request submitted by the inmate himself would entail a manifest circumvention of the provision and frustrate the obvious intent of the legislature when it enacted section 552.027. A bill analysis for House Bill No. 949 describes the evil that the legislation was designed to prevent:

Currently, Texas inmates are able to receive information through Chapter [552], Government Code (Open Records Act). Through this avenue, inmates have been using information obtained through Chapter [552] to file bogus income tax returns on correctional officers, harass nurses at their home addresses, and send mail to the homes of Texas Department of Criminal Justice employees.

Tex. Sen. Criminal Justice Comm., Bill Analysis, Tex. H.B. 949, 74th Leg., R.S. (1995) (quoting from "Background") (available through Senate Research Center). If an agent of an inmate were permitted to avail himself of the Open Records Act to obtain information on behalf of an inmate who otherwise would be prevented by section 552.027 from obtaining the information, the manifest intention of the legislature would be thwarted. *See Crimmins v. Lowry*, 691 S.W.2d 582, 584 (Tex. 1985) ("legislative intent is the law itself, and must be enforced if determined although it may not be consistent with the strict letter of the statute").

We conclude that section 552.027 of the Government Code, which permits a governmental body to decline to accept or comply with a request for information that is submitted by an individual who is imprisoned or confined in a correctional facility, also permits a governmental body to decline to accept or comply with a request that is submitted by that person's agent. The department may choose, of course, to release all or part of the information at issue that is not otherwise confidential by law. *See Gov't Code § 552.007.*

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



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Open Records Division
Office of the Attorney General

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Ref.: ID# 104740

Enclosures: Submitted documents

cc: Ms. Mary Ware
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(w/o enclosures)