



April 30, 2002

Mr. James M. Frazier III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2002-2230

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#162111.

The Office of the Ombudsman, associated with the Texas Department of Criminal Justice (the "department"), received two requests via e-mail for information concerning an inmate. You claim that the e-mail requests were not valid requests under 552.301(c) of the Government Code, that the first e-mail request constituted "merely a communication . . . and not an open records request," and that the requested information is excepted from disclosure under Government Code sections 552.108 and 552.134. We have considered your arguments and reviewed the submitted information.

The Public Information Act (the "Act") requires a governmental body to respond to a request for information only if the request for information is a proper written request. *See* Gov't Code § 552.301(a), (c). You assert that neither request was a proper e-mail request because neither was sent to the officer for public information or the officer's designee. Section 552.301(c) provides that "a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission." You indicate that the Office of the Ombudsman to which the e-mails were sent is neither the department's public information officer nor is it the officer's designee. Thus, we agree that the e-mail requests were not proper written requests and therefore do not require the department to respond. Gov't Code § 552.301 (governmental body's duty to request a ruling from the attorney general arises only after it receives a written request).

Because our ruling is dispositive of the issue, we need not consider your arguments as to whether the first e-mail message qualifies as a "request," or whether the requested information is excepted under sections 552.108 and 552.134.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

VGSun1

V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 162111

Enc: Submitted documents

c: Ms. Jean Brown  
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(w/o enclosures)