



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 9, 2003

Mr. Hugh Coleman  
Assistant District Attorney  
Denton County  
127 North Woodrow Lane  
Denton, Texas 76205

OR2003-3932

Dear Mr. Coleman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182411.

The Denton County Sheriff's Office (the "sheriff"), which you represent, received a request for "audio tape(s) of any and all conversations from the Denton County Jail made by [a named individual] to [the requestor's] office." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, you claim that all of the requested information is confidential under section 552.101 in conjunction with federal law. In support of your claim, you have provided us with a copy of a regulation promulgated by the Immigration and Naturalization Service ("INS") barring the release of information relating to INS detainees. You claim that this provision, section 236.6 of title 8 of the Code of Federal Regulations, makes the requested information confidential.

Section 236.6 states:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintain, provides, services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant

to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

8 C.F.R. § 236.6 (2002).

You explain that Denton County is under contract with INS to house INS inmates in its facility and have provided a copy of this agreement for our review. You further explain that the individual at issue was an INS detainee and not a county inmate. After reviewing your arguments and the appropriate statutes and case law, we agree that the sheriff is required to abide by rules promulgated by INS with regard to INS detainees. *See* 8 C.F.R. § 2.1 (providing that commissioner of INS may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also American Civil Liberties Union of New Jersey, Inc. v. County of Hudson*, 352 N.J. Super. 44, 799 A.2d 629 (2002) (stating that while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government's exclusive and expressed interest in regulating aliens). Consequently, the requested information is made confidential by section 236.6 and must be withheld from disclosure. *See ACLU*, 352 N.J. Super. 44 (concluding that because INS had authority to promulgate 8 C.F.R. § 236.6, provision preempts state law requiring disclosure of requested information); *see also English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation).<sup>1</sup>

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

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<sup>1</sup>Because we are able to make a determination under section 236.6, we need not address your additional arguments against disclosure.

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 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 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 182411

Enc. Submitted documents

c: Ms. Natalie F. Sellner,  
Paralegal  
Law Office of Terry W. Rombough  
3825 West Green Oaks Blvd, Suite 300  
Arlington, Texas 76016  
(w/o enclosures)