OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 30, 2003

Mr. Jim B. Simpson
Assistant County Attorney
Johnson County
2 North Main Street
Cleburne, Texas 76031

OR2003-5248

Dear Mr. Simpson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185047.

The Johnson County Sheriff's Office (the "sheriff") received two written requests from the same individual for all records pertaining to case numbers S0100676 and F34688. You contend that the sheriff is not required to comply with the requests pursuant to section 552.028 of the Government Code. Alternatively, you contend that the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.130 of the Government Code. We have also received correspondence from the requestor as to why the requested information should be released to her. *See* Gov't Code § 552.304.

Section 552.028 of the Government Code provides:

> (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 this chapter.

> (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.

You represent to this office that the requestor, in requesting the records at issue, is acting as an agent of her son, who is currently confined with the Texas Department of Criminal Justice Institutional Division. We additionally note that in correspondence addressed to this office the requestor has represented herself as acting as her son's agent. We therefore agree that the sheriff is not required to comply with the records request under section 552.028 of the Government Code. Accordingly, the sheriff may withhold the requested records in their entirety. *See Hickman v. Moya*, 976 S.W.2d 360 (Tex. App.—Waco 1998, pet. denied); *Moore v. Henry*, 960 S.W.2d 82 (Tex. App.—Houston [1st Dist.] 1996, no writ); Open Records Decision No. 656 (1997) (construing statutory predecessor).[1]

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).

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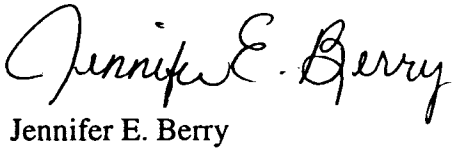
[1]Because we resolve your request under section 552.028, we need not address the applicability of the other exceptions you raised.

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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/RWP/sdk

Ref: ID# 185047

Enc: Submitted documents

c: Ms. Martha A. Whisenant
10225 County Road 606
Burleson, Texas 76028
(w/o enclosures)