ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2003

Ms. Jo Harrod
Administrative Manager
Somervell County Sheriff's Department
750 East Gibbs Boulevard
Glen Rose, Texas 76043

OR2003-6264

Dear Ms. Harrod:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187172.

The Somervell County Sheriff's Department (the "department") received a request for a statement made by a named individual in relation to a specified incident. You claim that the department need not comply with the request pursuant to section 552.028 of the Government Code and that the requested information is excepted from disclosure under sections 552.103 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.028 of the Government Code provides in relevant part that "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." Gov't Code § 552.028(a) (emphasis added). You inform us that the requestor is the mother of the incarcerated individual. Based on your representations, we understand you to assert that the requestor is an agent of the inmate for purposes of section 552.028. We agree that section 552.028 applies and the department need not comply with the request. As we are able to make this determination, we need not reach your remaining arguments.

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).

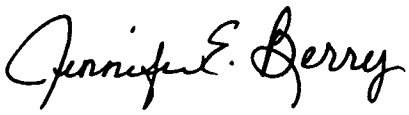
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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/sdk

Ref: ID# 187172

Enc: Submitted documents

c: Ms. Debra Martinez
P.O. Box 11
Glen Rose, Texas 76043
(w/o enclosures)