



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2004

Sheriff Arnulfo Gomez
Reeves County Sheriff's Department
P.O. Box 910
Pecos, Texas 79772

OR2004-10757

Dear Sheriff Gomez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 215385.

The Reeves County Sheriff's Department (the "department") received a request for information pertaining to inmate telephone service in the Reeves County jail, to include records documenting every collect call made from the jail, the number to which each collect call was placed, and the date and time of each call. You have submitted a copy of your correspondence with the requestor that indicates that some responsive information has been released. You further state, however, that the department does not possess the remaining information at issue and does not collect or acquire this information in the normal course of business. Accordingly, we understand you to contend that the requested information is not "public information" of the department that is subject to required disclosure under the Public Information Act (the "Act"). We have considered your comments and reviewed the correspondence you have submitted.

The Act only applies to public information. *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002. While the Act requires a governmental body to make a good faith effort to relate a request for information to information that the governmental body holds, the Act generally

does not require a governmental body to obtain information not in its possession. *See* Open Records Decision Nos. 599 (1992), 561 (1990), 534 (1989).

As noted, you state that the department does not possess the information at issue, and you indicate the department does not collect, assemble, or maintain such information in connection with official business. Rather, you contend that if the requested records exist, they are maintained by the private vendor that supplies inmate telephone service to the jail. Furthermore, in the correspondence you have submitted you state "I am unaware of any contractual right that would give me access to these records, if they do exist." Based on your representations that you neither possess the requested information nor have a right of access to it, we determine that the information at issue is not public information for purposes of the Act.¹ We therefore conclude the department need not further respond to the present request.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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).

¹ As we are able to make this determination, we do not address the privacy considerations you raise in your request for a decision from this office.

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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 215385

c: Mr. Pasqual Q. Olibas
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