ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2005

Chief Deputy Danny M. Daniel
Earth County Sheriff's Office
1043 Glen Rose Highway
Stephenville, Texas 76401

OR2005-09214

Dear Chief Deputy Daniel:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 234217.

The Erath County Sheriff's Department (the "sheriff") received two requests for information pertaining to a specified arrest. The sheriff claims that it is not required to comply with the request pursuant to section 552.028 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.028 provides that "[a] governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility[.]" Gov't Code § 552.028(a)(1). You inform us that the requestor "has lost the appeal of her conviction and is at this moment being transported from the Erath County Jail to the Woodman Unit to serve her sentence in that state jail." Thus, you indicate that the requestor was confined at the Erath County Jail when she made her requests for information. *See id.* § 552.028(c) ("correctional facility" is place for confinement of a person arrested for or charged with a criminal offense). Based on your representations that the requestor was imprisoned or confined in the Erath county jail when she made her requests, we agree that the sheriff may decline to accept or comply with her requests for information under the Act. *See id.* § 552.028(a)(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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 234217

Enc. Submitted documents

c: Ms. Deborah Kennedy Ferrell
Woodman Unit
1210 Coryell City Road
Gatesville, Texas 76528
(w/o enclosures)