



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 9, 2006

Mr. Shawn Dick
Assistant District Attorney
Williamson County
405 MLK No. 1
Georgetown, Texas 78626

OR2006-00246

Dear Mr. Dick:

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# 239616.

The Williamson County District Attorney's Office (the "district attorney") received a request for all information related to a specified criminal case in which an individual was charged with the offenses of serious bodily injury to a child and capital murder. You claim that the district attorney need not comply with the request pursuant to section 552.028 of the Government Code. Alternatively, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered your claims and reviewed the submitted information.

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.

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Gov't Code § 552.028. Thus, under section 552.028, a governmental body has discretion to release requested public information to an incarcerated individual or to an incarcerated individual's agent. *See Hickman v. Moya*, 976 S.W.2d 360 (Tex, App.—Waco,1998). Whether an individual is acting as an agent of an imprisoned individual is a factual determination that this office cannot make in the open records process. Open Records Decisions Nos. 554 (1990), 552 (1990). Consequently, we must rely on the representations of the governmental body requesting our opinion. *Id.*

You state that the individual at issue has been imprisoned after agreeing to plead guilty to injury to a child. You represent to us that the requestor is the girlfriend of the incarcerated individual, and is acting as his agent. You inform us the requestor previously obtained medical records to provide to the incarcerated individual's attorney in order to assist in his defense. In addition, you have provided us with copies of a visitation log and correspondence indicating that the requestor is acting on behalf of the incarcerated individual. Based on the district attorney's representations, we conclude that section 552.028 is applicable in this instance. Therefore, the district attorney may decline to accept or comply with this request for information. As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 239616

Enc. Submitted documents

c: Ms. Candra Walker
1827 Hart Street
Georgetown, TX 78626
(w/o enclosures)