



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2008

Mr. Russell D. Thomason
Criminal District Attorney
91st Judicial District
100 West Main, Suite 204
Eastland, Texas 76448

OR2008-00482

Dear Mr. Thomason:

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# 299143.

The Eastland County Criminal District Attorney (the "district attorney") received a request for a specified incident report.¹ You assert that the district attorney 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 of the Government Code provides as follows:

(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.

¹As you have not submitted the request for information, we take our description from your brief.

(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.

(c) In this section, "correctional facility" means: (1) a secure correctional facility, as defined by Section 1.07, Penal Code; (2) a secure correctional facility and a secure detention facility, as defined by Section 51.02, Family Code; and (3) a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Gov't Code § 552.028. In this instance, you state that the requestor, a representative of the Office of Consulado General De Mexico, is requesting the information as an agent of an inmate confined in a correctional facility, as defined by section 552.028(c). You explain that the requestor acted as the agent of the inmate by instructing the inmate's retained counsel to withdraw, announcing at a court hearing that she represented the inmate, refusing court-appointed counsel on behalf of the inmate, and seeking to secure different counsel for the inmate. Further, you state, and the submitted documentation reflects, that the requestor is not the inmate's attorney. Based on your representations and our review of the submitted documents, we agree that under section 552.028 of the Government Code, the district attorney need not comply with this 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

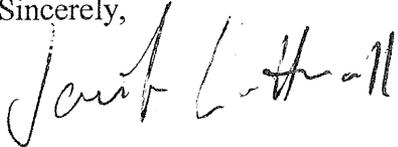
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 299143

c: Ms. Nancy Mendoza
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c/o Russell D. Thomason
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