ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2008

Mr. Rex Emerson
Kerr County Attorney
700 Main Street, Suite BA-103
Kerrville, Texas 78028

OR2008-05408

Dear Mr. Emerson:

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# 313451.

The Kerr County Sheriff's Department (the "department") received a request for information pertaining to the requestor. You contend that the sheriff is not required to accept or comply with this request for information pursuant to section 552.028 of the Government Code. You also claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.028 provides in relevant part the following:

> 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). You assert that the requestor is currently incarcerated at the Kerr County Jail, which you indicate is a correctional facility. *Id.* § 552.028(c) ("correctional facility" is place for confinement of person arrested for or charged with criminal offense). Thus, because the requestor is an inmate, pursuant to section 552.028 of the Government Code the department may decline to accept or comply with the request for information.[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 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

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[1]As our ruling is dispositive, we do not address your other arguments to withhold this information.

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/jh

Ref: ID# 313451

c: Mr. John Butler
c/o Rex Emerson
Kerr County Attorney
700 Main Street, Suite BA-103
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