



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 1, 2019

Ms. Heather Stebbins
County Attorney
Kerr County
700 Main Street, Suite BA-103
Kerrville, Texas 78028

OR2019-30906

Dear Ms. Stebbins:

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# 794857

The Kerr County Auditor's Office (the "auditor's office") received a request for information pertaining to a named inmate. The auditor's office claims it is not required to comply with the request pursuant to section 552.028 of the Government Code. We have considered the submitted argument.

Section 552.028 of the Government Code provides in relevant part the following:

(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.

...

(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(a), (c). Although the auditor’s office claims it is not required to accept or comply with the request for information, we conclude the auditor’s office has not established the requestor is requesting information on behalf of the incarcerated individual at issue. Thus, we find the auditor’s office has failed to demonstrate the request for information was submitted by an agent of an individual who is imprisoned or confined in a correctional facility. Accordingly, section 552.028 of the Government Code does not permit the auditor’s office to decline to comply with this request.

We must address the auditor’s office’s obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The auditor’s office received the request for information August 19, 2019. As of this date, the auditor’s office has not submitted to this office a copy or representative sample of the information requested. Accordingly, we conclude the auditor’s office failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). We note that a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977).

However, as you raise no exceptions to the disclosure of the requested information, it must be released to the requestor pursuant to section 552.302.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Erin Groff

Assistant Attorney General
Open Records Division

EMG/mo

Ref: ID# 794857

c: Requestor