



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 7, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-2060

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101613.

The Travis County Domestic Relations Office (the "office") received a request for all records pertaining to cause number 476,912, currently pending in the 126th Judicial District Court of Travis County, Texas. You claim that the requested records are records of the judiciary and are not subject to the provisions of chapter 552. You claim that if this office determines that the records are not records of the judiciary, they are excepted from disclosure under sections 552.101 and 552.103 of the Government Code.

Records of the judiciary are specifically excepted from the provisions of chapter 552 of the Government Code. Gov't Code § 552.003(1)(B). In *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ), the court explained the purpose of the judiciary exception as follows:

The judiciary exception . . . is important to safeguard judicial proceedings and maintain the independence of the judicial branch of government, preserving statutory and case law already governing access to judicial records. But it must not be extended to every governmental entity having any connection with the judiciary.

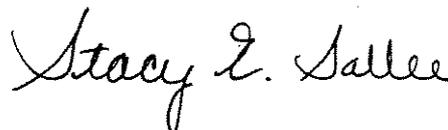
Id. at 152. The court in *Benavides* found the Webb County Juvenile Board not to be a part of the judiciary. In so finding, the court reasoned that an analysis of the judiciary exception should focus on the governmental body itself and the kind of information requested. *Id.* at 151; see Open Records Decision No. 572 (1990).

In *Delcourt v. Silverman*, 919 S.W.2d 777 (Tex. App.--Houston [14th Dist.] 1996, writ denied), the court held that a guardian ad litem in a child custody case was entitled to absolute judicial immunity. In reaching this conclusion, the court considered the function of the guardian ad litem. If the guardian ad litem was functioning as an actual functionary or arm of the court, the ad litem should be entitled to judicial immunity. *Delcourt*, 919 S.W.2d at 784. The court noted that other courts had determined that the function of a guardian ad litem in child custody cases was basically to act as an extension of the court when the ad litem is investigating facts and reporting to the court what placement was in the child's best interest. *Id.* at 785, citing *Ward v. San Diego County Dep't of Social Services*, 691 F. Supp. 238, 240 (S.D. Cal. 1988). The court concluded that so long as the appointment of the guardian ad litem contemplates the ad litem acting as an extension of the court, the ad litem is entitled to absolute judicial immunity.

You state that the court by order appointed the office to act as guardian ad litem of the child in this child custody case. See Fam. Code § 230.004(a)(6) (domestic relations office may represent child as guardian ad litem where termination of parent-child relationship is sought or where conservatorship of or access to child is contested). You also state that the office acts as the court's agent in gathering relevant information in the case. You further state that after the office gathers the pertinent information in a given case, the office reports its findings to the court and makes appropriate recommendations to the court on behalf of the child in the case. Based on the office's representations concerning the guardian ad litem's function in this case, we conclude that the ad litem is acting "as an arm of the court." See *Delcourt*, 919 S.W.2d at 781; Open Records Decision No. 646 (1996) at 4. ("The function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act"). Therefore, the requested records are not subject to the provisions of chapter 552 of the Government Code, and the office need not comply with the request.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 101613

Enclosures: Submitted documents

cc: Mr. Thomas W. Deatherage
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(w/o enclosures)