



January 25, 2001

Mr. James Eidson
Criminal District Attorney
Taylor County
300 Oak
Abilene, Texas 79602-1577

OR2001-0301

Dear Mr. Eidson:

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# 143078.

The District Clerk of Taylor County (the "district clerk") received a request for information relating to criminal cases filed against males with the last name of "Archer" during the last ten years. You state that the district clerk has agreed to release some of the requested information to the requestor. However, you claim that the dates of birth and social security numbers of the defendant that appear in the submitted records are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the information requested appears to be maintained by the district clerk as an agent of the judiciary and is therefore not subject to the Act. The Act applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, a "governmental body" under the Act "does not include the judiciary." Gov't Code § 552.003(1)(B). Information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act but is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." Gov't Code § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). In addition,

information that is “collected, assembled, or maintained . . . for the judiciary” by a governmental body acting as an agent of the judiciary is not subject to the Act. *Id.*; *cf.* Attorney General Opinions DM-166 (1992), H-826 (1976); Open Records Decision Nos. 610 (1992), 572 (1990), 513 (1988), 274 (1981). Generally, in performing its duties, we believe that the district clerk acts as an agent of the judiciary.

You inform us that the first document is a printout of records obtained and maintained by the Taylor County Sheriff’s Office (the “sheriff’s office”). You also inform us that this information “can be accessed from a computer terminal located within the District Clerk’s office.” We assume that in accessing the date of birth and the social security number from the database, the district clerk is acting as an agent of the judiciary. Thus, we believe that the date of birth and social security numbers that appear in the first document are part of a judicial record and therefore not subject to the Act. *See* Gov’t Code § 552.0035(a) (information collected, assembled or maintained for the judiciary is not subject to the Act); *cf.* Open Records Decision No. 572 (1990) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) of the Act and concluding that records compiled by governmental body for judicial purposes are records of the judiciary).

You inform us that the second document is what is commonly referred to as a CJIS form, which is compiled in accordance with chapter 60 of the Code of Criminal Procedure. Article 60.08(c) of the Code of Criminal Procedure provides that “[t]he clerk of the court exercising jurisdiction over a case shall report the disposition of the case to the Department of Public Safety.” You inform us that the information contained in the CJIS form “is accessible to the district clerk via the computer terminal in her office.” We assume that the date of birth and the social security number of the defendant contained in the CJIS form are also maintained by the district clerk acting as an agent of the judiciary. Therefore, we conclude that this information is part of a judicial record and not subject to the Act. *See* Gov’t Code § 552.0035(a); *cf.* Open Records Decision No. 572 (1990).

Because the requested records are records of the judiciary and not subject to the Act, the district clerk has discretion as to whether or not to release the information at issue. Additionally, we do not address whether any of the information at issue is governed by the rules of the Texas Supreme Court.¹

¹We note, however, that the rules of the Court allow for public disclosure of judicial records. The Texas Supreme Court’s Rules of Judicial Administration provide that “[j]udicial records . . . are open to the general public for inspection and copying during regular business hours.” Tex. Sup. Ct. R. 12.4(a). “*Judicial record* means a record made or maintained by or for a court or judicial agency in its regular course of business[.]” Tex. Sup. Ct. R. 12.2(d). “*Judicial agency* means an office . . . that is in the Judicial Department and that serves an administrative function for a court,” which presumably includes the district clerk’s office. Tex. Sup. Ct. R. 12.2(b).

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 General Services Commission 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,

A handwritten signature in black ink, appearing to read "Stephen P. Agan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 143078

Encl. Submitted documents

cc: Mr. Mike Coffey
Coffey Consulting
P.O. Box 101142
Fort Worth, Texas 76185
(w/o enclosures)