Office of the Attorney General · State of Texas
John Cornyn

February 2, 2001

Mr. Stephen L. Enders
Director
West Texas Community Supervision and Corrections Department
800 Overland, Suite 100
El Paso, Texas 79901

OR2001-0441

Dear Mr. Enders:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145187.

The West Texas Community Supervision and Corrections Department (the "department") received a request for the probation files of two specified individuals. You state that you only have information on one of the individuals. With respect to that information, you claim that the probation file constitutes records of the judiciary that is not subject to the Public Information Act (the "Act"). We have considered your argument and reviewed the submitted information.

The Act generally requires the public disclosure of information maintained by a "governmental body." While the Act's definition of a "governmental body" is broad, it specifically excludes the judiciary. *See* Gov't Code § 552.003(1)(B). In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether the role of the judiciary is in a judicial capacity or solely administrative in nature. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ)).

You explain that the department serves as the probation offices of El Paso, Culberson, and Hudspeth counties at the direction of the criminal courts as part of the court's judicial functions. *See* Gov't Code § 76.002 (requiring district judges trying criminal cases to establish community supervision and correction departments, enforce the conditions of

community supervision, and participate in the management of the department). This office has concluded that a community supervision and corrections department holds probationers' records on behalf of the judiciary as an agent of the judiciary. Open Records Decision Nos. 646 at 5 (1996), 236 (1980) (records of an adult probation office, indicating whether probationers are complying with terms of probation, are records of the judiciary and not subject to the Act). Because the requested information constitutes the records of an individual on probation which are maintained by the department at the direction of the criminal courts as part of the courts' judicial function, we conclude that the documents at issue are records of the judiciary. Thus, the department has no obligation under the Act regarding the release of the records.[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 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).

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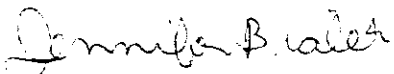
[1]The release of the requested information is within the discretion of the court, acting through its agent, the department. *See* Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)).

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).

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 Bialek
Assistant Attorney General
Open Records Division

JHB/seg

Ref: ID# 145187

Encl. Submitted documents

cc: Mr. Mike Lee
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(w/o enclosures)