



June 12, 2001

Ms. Susan K. Steeg  
General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR2001-2485

Dear Ms. Steeg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147726.

The Texas Department of Health (the “department”) received a request for 20 categories of information regarding minors receiving abortions without parental notification through the judicial approval process. You state that the requested information will be released with the exception of the “total amount paid under the authority of the Texas Family Code § 33.007 by court.” You claim that the amount paid by court is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 33.003(k) of the Family Code. We have considered the exception you claim and reviewed the submitted representative sample of information which reflects the amount of fees paid by the department broken down by court.<sup>1</sup> We have also reviewed the comments submitted by the requestor. *See* Gov’t Code § 552.304 (providing for submission of public comments).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by statute. Chapter 33 of the Family Code provides for parental notification for minors seeking an abortion or judicial approval to have an abortion without parental notification. Sections 33.003 and 33.004 of the Family Code outline the judicial approval procedures. Pursuant to section 33.003(k), all court documents pertaining to the

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<sup>1</sup>In reaching our conclusion here, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

proceedings are confidential and privileged and not subject to disclosure under the Public Information Act (the "Act"). Further, section 33.007 provides that a court acting under sections 33.003 and 33.004 may issue an order requiring the state to pay court costs as well as the cost of any appointed attorney ad litem and guardian ad litem. The order must be directed to the comptroller, who shall pay the ordered amount from funds appropriated to the Texas Department of Health. *See* Fam. Code § 33.007(b).

The 76th Legislature authorized the Texas Supreme Court to issue rules to ensure confidentiality during the judicial process.<sup>2</sup> Rule 1.9 of the Texas Parental Notification Rules and Forms provides the procedures by which the State, through the department, may be ordered to pay court costs and attorney and guardian ad litem fees. Rule 1.9(f) addresses confidentiality of the order awarding costs and provides as follows:

When transmitting an order awarding costs to the Department of Health, the clerk must take reasonable steps to preserve its confidentiality. The confidentiality of an order awarding costs—as prescribed by Chapter 33, Family Code—is not affected by its transmission to the Comptroller, Texas Department of Health, or the Office of Court Administration, nor is the order subject to public disclosure in response to a request under any statute, rule, or other law. But these rules do not preclude the Comptroller, Texas Department of Health, and the Office of Court Administration from disclosing summary information from orders assessing costs for statistical or other such purposes.

Further, the Texas Supreme Court also states the following in Note and Comment 8 to the Texas Parental Notification Rules and Forms:

Because orders awarding costs contain information made confidential by Chapter 33, Family Code, that confidentiality should not be affected by the transmission to the Texas Department of Health and the Comptroller, which is necessary to effectuate payment, or to the Office of Court Administration, which is necessary to oversee the costs associated with the proceedings. Rule 1.9(f) does not preclude either the Comptroller, Texas Department of Health, or the Office of Court Administration from disclosing total amounts paid for all proceedings, or average amount per proceeding, or other such statistical summaries or analyses which do not impair the confidentiality of the proceedings.

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<sup>2</sup>*See* Act of May 25, 1999, 76th Leg., R.S., ch. 395, 1999 Tex. Gen. Laws 2466.

According to the department, “when read together, these sections do not authorize [the department] to release data that would in any way link cost information with specific courts.” The requestor, however, points out that she has requested the total amount paid by court, which she asserts does not threaten the anonymity of the minor nor impair the confidentiality of the proceedings.<sup>3</sup> The central issue is whether the disclosure of the court that issued the order awarding costs is the type of summary information that would impair the confidentiality of the proceedings and, therefore, was intended to be confidential under section 33.003(k) of the Family Code.

In comment 8, the Texas Supreme Court states that the order awarding costs contains confidential information. The court has provided Form 2F as an example of the form and content of the court order awarding costs. The form contains the case name as “In re Jane Doe.”<sup>4</sup> Thus, the anonymity of the minor is already protected. The form also includes the cause number and the court, the names and addresses of the attorney ad litem, guardian ad litem, the court reporter, and the respective fees owed to these persons as well as the amount of court costs. Because the identity of the minor is already protected in the court order, the Texas Supreme Court must consider other information in the order, such as the court, to be confidential. In a recent case, the Texas Supreme Court considered whether it could publish its opinion regarding an appeal of the denial of an application to receive an abortion without parental notification. *See In re Jane Doe*, 19 S.W.3d 249 (Tex. 2000). The Texas Supreme Court decided that its opinion could be published and noted that it could do so without disclosing the identity of the minor, the court of appeals, or the trial court. *Id.* at 252. Based on this language, we conclude that the Texas Supreme Court considers the identity of the trial court to be confidential. Therefore, we determine that the total amount paid by *court* is not the type of statistical summary that the department is authorized to release, but rather confidential information concerning the proceedings. Accordingly, we conclude that the department must withhold the submitted information.

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

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<sup>3</sup>We note that the department has already released summary information regarding the total amount paid for all proceedings and the average amount paid per proceeding. Further, the department has released copies of invoices or payments to attorney and guardian ad litem with the names and identities of the guardian and attorney ad litem redacted as requested by the requestor.

<sup>4</sup>Rule 1.3 of the Texas Parental Notification Rules and Forms provides that no reference may be made in any order to the name of the minor, her address, or any other identifying information.

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,



Jennifer H. Bialek  
Assistant Attorney General  
Open Records Division

JHB/sdk

Ref: ID# 147726

Encl: Submitted documents

cc: Ms. Teresa S. Collett  
Professor of Law  
South Texas College of Law  
1303 San Jacinto Street  
Houston, Texas 77002-7000  
(w/ô enclosures)