



November 18, 2002

Mr. Gordon Bowman
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2002-6560

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172270.

The Travis County Community Supervision and Corrections Department (the “department”) received a request for information relating to (1) the Austin Stress Clinic; (2) the relationship between two named individuals and/or the Austin Stress Clinic; (3) the department’s employment of one of the named individuals; (4) departmental policy regarding conflict of interest between employees and vendors; and (5) data submitted by the Austin Stress Clinic regarding clients referred by the department. You assert that the requested information is not subject to the Public Information Act (the “Act”), chapter 552 of the Government Code. Alternatively, you claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and have reviewed the information you submitted.¹ We note that none of the submitted information appears to be responsive to the request for departmental conflict of interest policy. We therefore assume that the department has released any information responsive to that aspect of the request that was in existence when the department received the request for information. If not, then the department must do so at this time. *See Gov’t Code*

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).*

§§ 552.301, .302; Open Records Decision No. 664 (2000). We note that chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Initially, we address your assertion that the requested information is not subject to the Act. The Act is generally applicable to information that is held by or on behalf of a "governmental body." *See* Gov't Code § 552.003(1)(A). Although the definition of "governmental body" is broad, it does not include "the judiciary." *See id.* § 552.003(1)(B). In determining whether a particular governmental entity falls within the judiciary exception to the Act, we look to whether the governmental entity maintains the relevant information as an agent of the judiciary with regard to a judicial as opposed to an administrative function. *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)). In Open Records Decision No. 646 (1996), we determined that a community supervision and corrections department is not part of the judiciary for purposes of the Act and instead is a governmental body under section 552.003. *Id.* at 4. We also determined, however, that information held by a community supervision and corrections department that specifically relates to individuals on probation and subject to the direct supervision of a court falls within the Act's judiciary exclusion because such information is held on behalf of the judiciary. *Id.*

You indicate that some of the submitted information relates to individuals who are on probation and are subject to the direct supervision of district court judges. To the extent that the submitted information relates to probationers who are under judicial supervision, we agree that such information is maintained by the department on behalf of the judiciary and therefore is not subject to disclosure under the Act. We have marked that information. We find that the rest of the submitted information relates to personnel and other administrative functions of the department and thus is subject to the Act. Therefore, the remaining information must be released unless it comes within an exception to disclosure.

You claim that some of this information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 76.006 of the Government Code. Chapter 76 of the Government Code is applicable to community supervision and corrections departments. Section 76.006(g) provides that "[a] document evaluating the performance of an officer of the department who supervises defendants placed on community supervision is confidential." The word "department" in section 76.006 means "a community supervision and corrections department established under [chapter 76]." *See* Gov't Code § 76.001(4). You assert that some of the submitted information is confidential under section 76.006(g). Having reviewed the information in question, we conclude that it does not evaluate the performance of an

officer of the department for purposes of section 76.006(g) of the Government Code. Therefore, you may not withhold the information in question under section 552.101 of the Government Code in conjunction with section 76.006(g).

You also raise section 552.101 in conjunction with the common-law right to privacy. Common-law privacy protects private facts about individuals. Information must be withheld from public disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The common-law right to privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

Common-law privacy also protects certain kinds of financial information. Prior decisions of this office have determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

You assert that the submitted documents contain personal and financial information that comes within the scope of common-law privacy. Having reviewed these documents, we have marked a small amount of private information that you must withhold under section 552.101.

We note that section 552.117 of the Government Code also may be applicable to some of the submitted information. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117 must be determined at the time that the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, you may only withhold information under section 552.117(1) on behalf of a current or former official or employee of the department who made a request for confidentiality under section 552.024 prior to the date on which the department received this request for information. In the case of a current or former official or employee who made a timely request for confidentiality, you must withhold the person's home address and telephone number, social security number, and any information that reveals whether the person has family members. You may not withhold this information under section 552.117 in the case of a current or former official or employee who did not make a timely election to keep the information confidential. We have marked the information that may be excepted from disclosure under section 552.117.

A social security number also may be excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted documents was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution the department, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

We also note that the submitted documents contain a driver's license number. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). If the driver's license number that we have marked is a Texas driver's license number, then it must be withheld from disclosure under section 552.130.

In summary, the marked information relating to individuals on probation and subject to judicial supervision is not subject to disclosure under chapter 552 of the Government Code.

The rest of the submitted information is subject to chapter 552. We have marked a small amount of that information that must be withheld from disclosure under section 552.101 in conjunction with common-law privacy. We also have marked information that may be excepted from disclosure under section 552.117. A social security number may also be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The marked driver's license number must be withheld under section 552.130 if it is a Texas driver's license number. The rest of the submitted information must be released.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "J.W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 172270

Enc: Marked documents

c: Ms. Nanci Wilson
KEYE News
10700 Metric Boulevard
Austin, Texas 78758
(w/o enclosures)