



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

June 27, 2003

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2003-4425

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183445.

The Texas Department of Criminal Justice (the "department") received a request for "a current set of the interstate compact data," "the exact same information (same fields) that [the requestor] received from [the department] previously." You claim that the responsive information does not belong to the department, but rather to the Interstate Commission for Adult Offender Supervision (the "Commission"), and that provisions of the Interstate Compact for Adult Offender Supervision (the "Compact") have "specifically empowered the [Commission] to establish procedures under which it makes its information available to the public." We have considered your arguments. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

The Compact has provided the sole statutory authority for regulating the transfer of adult parole and probation supervision across state boundaries since 1937.<sup>1</sup> You inform this office that Texas is a party to the Compact through enactment of chapter 510 of the Government Code. Section 510.017 of the Government Code enacts the provisions of the Compact, and section 510.016 provides that "[i]n the event the laws of this state conflict with the compact, the compact controls . . ." The Commission was created under the Compact to "oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission" and

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<sup>1</sup><http://www.adultcompact.org/About.htm>; *see also* Gov't Code § 510.017, Art. III(b).

to “establish uniform standards for the reporting, collecting and exchanging of data.” Gov’t Code § 510.017, Art. IV(c), (s). The Commission oversees the day-to-day oversight of the Compact between the states and activities of the Commission staff.<sup>2</sup> Further, the Compact provides that “[t]he [Commission’s] bylaws shall establish conditions and procedures under which the [Commission] shall make its information and official records available to the public for inspection or copying.” Gov’t Code § 510.017, Art. VI(e). Finally, the Compact provides that the Commission “shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules that specify the data to be collected, the means of collection and data exchange and reporting requirements.” Gov’t Code § 510.017, Art. VI(h). The Texas Probation and Parole Interstate Compact is administered through the Texas Department of Criminal Justice Interstate Compact Office.<sup>3</sup> This office serves as the agent for Texas supervising agencies and interacts with other states in facilitating the transfer of supervision services for offenders who are approved to reside and work in a territory other than where they were convicted.<sup>4</sup>

You state that the responsive information belongs to the Commission and not the department. You claim that “it is also [your] view that the provisions of the [Compact] specifically empowered the [Commission] to establish procedures under which it makes its information available to the public.” Finally, you reiterate that it is your belief that “the information about the interstate movement of probation offenders held by the Compact Administrator belongs to the Interstate Commission not to TDCJ.” Thus, the department asserts that the Compact, and not the Public Information Act (the “Act”), governs release of the database information pertaining to supervisees.

We have contacted the Texas Commissioner for the Commission, and have been informed that currently the Commission has no database on offenders. While the goal of the Commission is to eventually have a central Commission database, at this time individual state members maintain their own databases individually. By its terms, the Compact only governs the Commission’s database, which has yet to be created. Consequently, the Compact does not govern each individual state’s database. In this case, the requestor seeks data from the department’s database, which is established and maintained by the department. Thus, we do not agree that the information the requestor seeks belongs to the Commission, and therefore cannot conclude that it is subject to the Compact rather than the Act.

In correspondence to this office, the requestor refers to an earlier request he made for similar information. Specifically, this requestor sought information pertaining to the interstate compact database. In your brief to this office regarding this request, in response to which our

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<sup>2</sup><http://www.adultcompact.org/About.htm>; *see also* Gov’t Code § 510.017, Art. IV(e).

<sup>3</sup><http://www.tdcj.state.tx.us/pgm&svcs/pgms&svcs-instatecom.htm>

<sup>4</sup>*Id.*

office issued Open Records Letter No. 2001-4607 (2001), the department stated that “[t]here is information about probationers that is generally recognized as available to the public, e.g., identity, cause number of the criminal prosecution from which the probation springs, and conditions of the probation.” The department noted in its brief that this information was made available to the requestor. In the present request, the requestor states that he is currently seeking “an update of the same records” *released* in response to his previous request. Because the department has not asserted an exception that permits the department to withhold such information, the department must release an updated version of the information that was previously released to the requestor. Gov’t Code §§ 552.301, .302.

We now address your argument that the requested information pertaining to probationers “is information that is collected, assembled and maintained for the judiciary and not subject to the provisions of the open records act.” We note that the Act generally requires the disclosure of information maintained by a “governmental body.” However, while the Act’s definition of a “governmental body” is broad, it specifically excludes “the judiciary.” *See* Gov’t Code § 552.003(1)(A), (B). In determining whether a governmental entity falls within the judiciary exception to the Act, this office looks to whether the governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative, functions. *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)). Applying this analysis, this office has determined that probation departments maintain probationers’ records as agents of criminal courts in regard to the courts’ judicial functions.

State courts are responsible for supervising probationers. Article 42.12, section 1 of the Code of Criminal Procedure provides that state courts are responsible for “determining when the imposition of sentence in certain cases shall be suspended, the conditions of community supervision, and the supervision of defendants placed on community supervision.” In Open Records Decision No. 236 at 2 (1980), this office concluded that probation officers who act according to the court’s direction serve merely as the court’s agents in carrying out their supervisory duties. Because district court judges have the ultimate direction and control over the supervision and rehabilitation of probationers, the probation department maintains probationers’ records solely on behalf of the court. Probationers’ records are therefore records of the judiciary and are not subject to the provisions of the Public Information Act.

Open Records Decision No. 646 at 4 (1996). In this case, you claim that “the probation information contained in the Commission’s database about an offender being supervised on community supervision in another state, but still under the jurisdiction of the local [Texas] sentencing court, is derived from the local court’s order modifying the conditions of probation to permit supervision by another state.” In the previous brief to this office, you indicated that the department acts as the agent of the Texas supervising agencies in creating

this information. In Open Records Letter No. 2001-4607, we concluded that the probation information at issue, including the probationer comments in the database, were maintained by the department at the direction of criminal courts in regard to the courts' judicial functions. *See* Gov't Code §§ 76.002 (requiring district judges trying criminal cases to establish community supervision and correction departments); *see also* Open Records Decision No. 646 at 4 (1996). Consequently, we concluded that the probation records were records of the judiciary and, therefore, not subject to the provisions of the Act. Accordingly, the department may rely on the prior ruling's conclusion that certain data elements in the database pertaining to probationers are not subject to the Act because they are records of the judiciary.<sup>5</sup>

In summary, the department may rely on Open Records Letter No. 2001-4607 and not produce information from certain database fields regarding probationers because it is information maintained on behalf of the judiciary. The department must release an updated version of information previously released to the requestor.

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

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<sup>5</sup>We also noted that the release of the submitted information at issue in Open Records Letter Ruling No. 2001-4607 was 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)); *see also* Tex. R. Jud. Admin. 12.

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 Dep't of Pub. 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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

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Ref: ID# 183445

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