



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2003

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney
County of Bexar
300 Dolorosa Suite 4049
San Antonio, Texas 78205-3030

OR2003-9052

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192962.

The Bexar County Community Supervision and Corrections Office (the "office") received a request for (1) documentation of the annual number of probationers discharged from supervision in Bexar County per year from 1998 to 2002, and (2) the last known mailing addresses of probationers discharged from supervision in Bexar County from 1998 to 2002. You state that you have released information responsive to item one of the request. You claim that the information responsive to item two of the request, the last known addresses of probationers discharged from supervision, is not subject to disclosure under the Public Information Act (the "Act"). We have considered your arguments and reviewed the submitted information.

We note that the Act generally requires the 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 entity in question is performing a judicial function or acting in a purely administrative role. 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), this office determined that a community supervision and corrections department holds probationers' records on behalf of the judiciary as an agent of the judiciary.

See Open Records Decision Nos. 646 at 5 (1996); *see also* Open Records Decision No. 236 (1980) (records of adult probation office indicating whether probationers are complying with terms of probation are records of judiciary not subject to Act). You state that the submitted probation records are contained within a file of the judiciary. Based on our review of your representations and the submitted information, we agree that the submitted information is held by the office on behalf of the judiciary and is, therefore, not subject to disclosure under the Act.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).

¹We note, however, that certain judicial records may be open to the public under sources of law other than chapter 552. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) (documents filed with court are generally considered to be public); Attorney General Opinion DM-166 at 3 (public has general right to inspect and copy judicial records); Open Records Decision No. 618 at 4 (Texas courts have recognized common-law right of public to inspect and copy records of the judiciary).

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 192962

Enc. Submitted documents

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(w/o enclosures)