



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2004

Ms. Shelly O'Brien Yeatts  
Assistant District Attorney  
Dallas County  
133 N. Industrial Blvd., LB 19  
Dallas, Texas 75207-4399

OR2004-4685

Dear Ms. Yeatts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203408.

The Dallas County District Attorney's Office (the "district attorney") received a request for all documents related to a specified investigation at the Henry Wade Juvenile Detention Center (the "center"). You claim that the requested information is not subject to the Public Information Act (the "Act"). Alternatively, you claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

First, you assert that the submitted information is not subject to the Act. 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))*. In *Open Records Decision No. 646 (1996)*, this office determined that specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department fall within the Act's judiciary exclusion because such records are held on behalf of the judiciary.

Consequently, to the extent the center maintains the submitted information on behalf of the judiciary, the Act is inapplicable to such information, and that information is therefore not

subject to public release under the Act. However, upon review of your arguments, we find that you have failed to demonstrate which, if any, of the submitted records are maintained by the center on behalf of the judiciary. Therefore, we will address your claimed exceptions for all of the submitted records.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You state that "[a]s required by section 261.405(b) of the Family Code, the Center has reported the alleged abuse to the Texas Juvenile Probation Commission ("TJPC") and a local law enforcement agency for investigation." Further, you explain that all of the documents at issue have been provided to the TJPC and the Dallas Police Department. Based on your representations and our review of the submitted information, we conclude that the submitted information consists of reports, records, or working papers used or developed in an investigation made under chapter 261 of the Family Code. We understand that no regulation exists that would allow for the release of this type of information. Therefore, the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the district attorney must withhold the submitted information in its entirety under section 552.101 of the Government Code. As we are able to make this determination, we need not address your remaining arguments.

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 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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/krl

Ref: ID# 203408

Enc: Submitted documents

c: Mr. Kelvin Drain  
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(w/o enclosures)