



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2006

Mr. David M. Swope
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2006-03483

Dear Mr. Swope:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 245780.

Harris County (the "county") received a request for the history report of a keycard used by a named judge at a certain entrance to the Franklin Criminal Justice Center during a specific time period. You claim that the submitted information consists of records of the judiciary not subject to the Act. Alternatively, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we must address your claim that the requested information is a judicial record not subject to the Act. The Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). The Act does not apply to records of the judiciary. *See* Gov't Code § 552.003(1)(B). Information that is "collected, assembled or maintained by or for the judiciary" is not subject to the Act. Gov't Code § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see* *Benavides v. Lee*, 665 S.W.2d 151 September 19, 2005(Tex. App.--San Antonio 1983, no writ); Open Records Decision No. 646 (1996) at 4 ("function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act.").

In Open Records Decision No. 646 (1996), this office concluded that a supervision and corrections department, established by criminal district judges under chapter 76 of the

Government Code, was a governmental body subject to the Act, and not a part of the judiciary. Open Records Decision No. 646 at 3-4 (1996). The Attorney General concluded that administrative records, such as personnel files and other records reflecting the day-to-day management of the department, were subject to the Act. *Id.* at 5. On the other hand, this office concluded that specific records pertaining to judicial proceedings, such as information about individuals on probation and subject to the direct supervision of a court, were not subject to the Act because such records were held on behalf of the judiciary. *Id.*

You state that the keycard at issue belongs to a district court judge, and claim that the submitted information directly involves the security of a judge. Thus, you argue that rule 12.5(b) of the Texas Rules of Judicial Administration¹ applies to the information at issue, not the Act. *See* Gov't Code § 552.0035(a). However, you state that the submitted information is maintained by the Harris County Facilities and Property Management Department. Furthermore, upon review, it is clear that the submitted information consists of administrative records pertaining to the day-to-day management of the Franklin Criminal Justice Center, and not to any judicial proceeding. Accordingly, we find that the submitted information is not a record of the judiciary, and is public information subject to the Act. *See* Gov't Code § 552.021 (Act generally requires disclosure of information maintained by "governmental body").

Turning to your claimed exceptions, section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under this section, this office has determined that information may be withheld from public disclosure in special circumstances. In Open Records Decision No. 169 (1977), we considered the personal safety concerns of public employees and recognized that there may be specific instances where "special circumstances" exist to except from public disclosure some of the employees' addresses. *See* Open Records Decision No. 123 (1976). In that decision, the employees demonstrated that their lives would be placed in danger if their addresses were released to the public. ORD 169 at 7. This office further noted that the initial determination of credible threats and safety concerns should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* We noted, however, that "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* at 6.

¹Rule 12.5(b) states, "The following records are exempt from disclosure under this rule:

...

(b) Security Plans. Any record, including a security plan or code, the release of which would jeopardize the security of an individual against physical injury or jeopardize information or property against theft, tampering, improper use, illegal disclosure, trespass, unauthorized access or physical injury. Tex. Sup. Ct. R. 12.5(b).

You assert that release of the submitted information could compromise the security of the Franklin Criminal Justice Center, and have submitted two affidavits in support of this claim. The first affidavit is from Robert Sprott, who is responsible for the security of all Harris County buildings. Mr. Sprott informs us that "There is only one entrance and one exit to the underground parking facilities at the 1201 Franklin Criminal Justice Center. A parking arm controls the entry and exit and all vehicles have to stop and wait for the arm to rise." Mr. Sprott then asserts that "Having information about when a Criminal Court judge enters and leaves a facility provides intelligence for someone to plan an ambush or other potential destructive act." Mr. Sprott also describes some recent threats directed at individuals and offices at the Franklin Criminal Justice Center. The second affidavit is from the named judge, who informs us that he handles numerous criminal felony cases, many of which involve violent offenders, and has received threats from defendants in the past. The judge also claims that release of the information at issue would compromise his safety. Based on your representations, the submitted affidavits, and our review of the submitted information, we conclude that the county has demonstrated the existence of special circumstances regarding the named judge. Accordingly, the county must withhold the responsive information under section 552.101 of the Government Code. As our ruling is dispositive, we need not address your argument under section 552.136 of the Government Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read 'José Vela III', with a stylized flourish at the end.

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 245780

Enc. Submitted documents

c: Mr. Stephen Dean
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(w/o enclosures)