



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2007

Mr. Todd George  
Attorney  
Texas Parks & Wildlife Department  
4200 Smith School Road  
Austin, Texas 78744-3291

OR2007-08946

Dear Mr. George:

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# 284295.

The Texas Parks & Wildlife Department (the "department") received two requests for information relating to persons who have had a license issued by the department suspended for nonpayment of child support since 2004, including names, addresses, type of license, date of suspension and the court issuing the suspension.<sup>1</sup> You state that part of the responsive information will be released to the requestors with certain information redacted pursuant to a previous determination issued to the department in Open Records Letter No. 2004-1349 (2004). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You claim that the submitted information consists of judicial records that are not subject to disclosure under the Act. In the alternative, you argue that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.<sup>2</sup>

You note that the Act does not apply to records of the judiciary. *See* Gov't Code § 552.003(1)(B). In *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ), the court explained the purpose of the judiciary exception as follows:

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<sup>1</sup>The department informs us it sought and received clarification from the requestors regarding a portion of their requests. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The judiciary exception... is important to safeguard judicial proceedings and maintain the independence of the judicial branch of government, preserving statutory and case law already governing access to judicial records. But it must not be extended to every governmental entity having any connection with the judiciary.

*Id.* at 152. The court in *Benavides* found the Webb County Juvenile Board not to be a part of the judiciary. In so finding, the court reasoned that an analysis of the judiciary exception should focus on the governmental body itself and the kind of information requested. *See id.* at 151; *see also* Open Records Decision No. 572 (1990). This office has found that to fall under the judiciary exclusion, requested records must contain information that pertains to judicial proceedings and be subject to direct supervision of a court. Open Records Decision No. 671 (2001) (citing Open Records Decision No. 646 at 5 (1996)). Based on your representations and our review, we find the submitted information does not consist of records of the judiciary as contemplated by section 552.003 of the Government Code. Therefore, we will address your exception to disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is made confidential by statute. You claim that the submitted information is confidential under section 231.108 of the Family Code. This section provides as follows:

- (a) Except as provided by Subsection (c), all files and records of services provided under [chapter 231 of the Family Code], including information concerning a custodial parent, noncustodial parent, child, and an alleged or presumed father, are confidential.
- (b) Except as provided by Subsection (c), all communication made by a recipient of financial assistance under Chapter 31, Human Resources Code, or an applicant for or recipient of services under this chapter are privileged.
- (c) The Title IV-D agency may use or release information from the files and records, including information that results from a communication made by a recipient of financial assistance under Chapter 31, Human Resources Code, or by an applicant for or recipient of services under this chapter, for purposes directly connected with the administration of the child support, paternity determination, parent locator, or aid to families with dependent children programs. The Title IV-D agency may release information from the files and records to a consumer reporting agency in accordance with Section 231.114.
- (d) The Title IV-D agency by rule may provide for the release of information to public officials.

(e) The Title IV-D agency may not release information on the physical location of a person if:

(1) a protective order has been entered with respect to the person; or

(2) there is reason to believe that the release of information may result in emotional or physical harm to the person.

(f) The Title IV-D agency, by rule, may provide for the release of information to persons for purposes not prohibited by federal law.

(g) The final order in a suit adjudicating parentage is available for public inspection as provided by Section 160.633.

Fam. Code § 231.108; *see also* 42 U.S.C. § 654(26) (state plan for child and spousal support must have in effect safeguards, applicable to all information handled by State agency, that are designed to protect privacy rights of parties); Open Records Decision No. 417 at 4 (1984) (records relating to recipients of child support collection services are confidential).

Chapter 231 of the Texas Family Code governs the administration of the Title IV-D child support programs. The Office of the Attorney General (the “OAG”) is the legislatively-designated Title IV-D agency under chapter 231. *See* Fam. Code § 231.001. The suspension of licenses in Title IV-D cases is a federally-mandated IV-D enforcement function. *See* Fam. Code § 231.001 *et seq.*; *see also* 42 U.S.C. §§ 654(20) (to extent required by 42 U.S.C. § 666, state shall have in effect laws to improve child support enforcement effectiveness referred to in that section), 666(16) (addressing authority to withhold or suspend licenses).

In this instance, you state that the submitted orders were sent to the department by the OAG. You indicate that the department uses this information for the administration and enforcement of a child support program. *See id.* § 231.108(c) (allowing the OAG to release information subject to chapter 231 of the Family Code only for purposes directly connected with the administration of child support programs). Based on your arguments and our review of the information at issue, we conclude that the department must withhold the submitted information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 231.108 of the Family 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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 284295

Enc. Submitted documents

c: Ms. Staci Thomas  
3990 Spring Valley Road #915  
Dallas, Texas 75244  
(w/o enclosures)

Mr. Sam Jackson  
P.O. Box 141936  
Austin, Texas 78714-1936  
(w/o enclosures)