



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2009

Mr. Erik Brown
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-10102

Dear Mr. Brown:

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# 349620.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a named individual. You indicate that some of the requested information has been released. You contend that the submitted information is not subject to the Act.¹ We have considered your arguments and reviewed the submitted information.

The Act generally requires the disclosure of information maintained by a "governmental body." Nevertheless, and although the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See* Gov't Code § 552.003(1)(A)-(B). Access to information collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Texas Supreme Court or by other applicable laws and rules. *See id.* § 552.0035(a). In determining whether information held by a governmental entity falls within the judiciary exception to the Act, this office looks to whether the governmental entity

¹Although you initially claimed exceptions to disclosure of the requested information under the Act, you have withdrawn your assertion of those exceptions. Accordingly, this decision does not address the applicability of any of the exceptions that the department initially raised. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submitted written comments explaining applicability of claimed exceptions to information at issue).

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. As we explained in Open Records Decision No. 646:

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 (1980) at 2, 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 [Act].

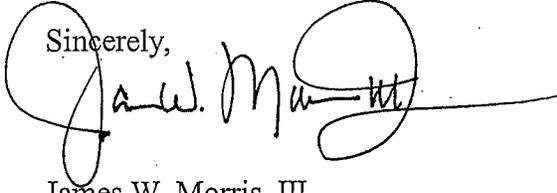
ORD 646 at 4; *see* Gov't Code § 76.002 (requiring district judges trying criminal cases to establish community supervision and correction departments). You inform us that the submitted information consists of probation records relating to an individual who was granted probation and ordered to pay restitution by a Texas court. You explain that although the individual in question subsequently relocated to the state of Illinois, he remains subject to the Texas court's jurisdiction. You state that the submitted records are maintained by the department "as an agent of the judiciary" and that the records in question "are maintained for the sentencing court for the same purpose as those maintained by local probation offices." Based on your representations and our review of the information at issue, we find that the department maintains the submitted information as an agent of the judiciary. We therefore conclude that the submitted information consists of records of the judiciary that are not subject to the Act and may only be released in accordance with other applicable laws and rules. *See* Gov't Code § 552.0035. As we are able to make this determination, we do not address your other arguments against disclosure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 349620

Enc: Submitted documents

c: Requestor
(w/o enclosures)