



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2015

Mr. J. Greg Hudson
Attorney for Capital Area Private Defender Service
Hudson & O'Leary, LLP
1010 MoPac Circle, Suite 201
Austin, Texas 78746

OR2015-06699

Dear Mr. Hudson:

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# 557407.

Capital Area Private Defender Service ("CAPDS"), which you represent, received a request for all documents involved in the requestor's review process, including the comments and evaluations submitted by the judges to CAPDS' review committee (the "committee"). You claim the requested information is not subject to the Act. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, you assert the committee is not a governmental body because the committee is not supported by public funds. You state the committee "evaluates local attorneys for criminal assignments for indigent adult criminal defendants" and consists of attorneys who volunteer their services to CAPDS. We note the Act applies to "governmental bodies" as that term is defined in section 552.003(1)(A) of the Government Code. Under the Act, the term "governmental body" includes several enumerated kinds of entities and "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

spends or that is supported in whole or in part by public funds[.]” Gov’t Code § 552.003(1)(A)(xii). The term “public funds” means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). You acknowledge the committee was created by CAPDS pursuant to article 26.047(e) of the Code of Criminal Procedure, which authorizes the creation of review committees to evaluate attorney qualifications for the representation of indigent criminal defendants as part of a managed assigned counsel program. *See* Crim. Proc. Code art. 26.047(e); *see also id.* art. 26.047(a)(2) (defining “[m]anaged assigned counsel program” as program operated with public funds by nonprofit corporation for purpose of appointing counsel).

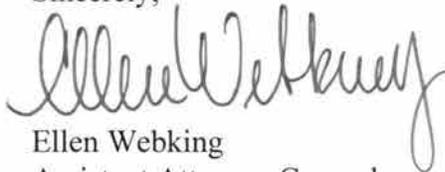
Upon review, we find the committee is part of CAPDS. You acknowledge CAPDS is a governmental body supported by public funds. *See id.* art. 26.047(a)(2). Thus, we will address your argument against disclosure of the submitted information.

You argue some of the submitted information is not subject to the Act because it constitutes records of the judiciary. The Act is applicable to information “written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body[.]” Gov’t Code § 552.002(a)(1). However, the Act’s definition of “governmental body” “does not include the judiciary.” *Id.* § 552.003(1)(B). Information “collected, assembled, or maintained by or for the judiciary” is not subject to the Act but instead is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov’t Code § 552.003(1)(B) prior to enactment of Gov’t Code § 552.0035). You contend the judges’ comments and evaluations are exempt from disclosure under rule 12 of the Rules of Judicial Administration. Rule 12 governs the public disclosure of judicial records, which are not subject to the Act. TEX. R. JUD. ADMIN. 12.1, 12.3; Gov’t Code §§ 552.003(a)(B), .0035(a). Rule 12.2 of the Rules of Judicial Administration defines a “judicial record” as “a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function[.]” TEX. R. JUD. ADMIN. 12.2(d). You contend, and submit an affidavit from the judge of the 403rd Criminal District Court of Travis County, Texas (the “court”) contending, the information at issue constitutes judicial records maintained by the court. In this instance, the information at issue consists of information held by CAPDS for its use in evaluating local attorneys for criminal assignments for indigent adult criminal defendants. Because this information is maintained by CAPDS, it does not constitute a judicial record subject to the Rules of Judicial Administration and instead is information subject to the Act. *Id.*; Gov’t Code §§ 552.002(a), .003(1)(A)(iii). Rule 12 does not apply to records or information to which access is controlled by the Act. TEX. R. JUD. ADMIN. 12.3(a)(4). Therefore, as the information at issue is subject to the Act, it may only be withheld if it is excepted from disclosure under an exception in the Act. In this instance, as you raise no exceptions to disclosure, CAPDS must release the submitted information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ellen Webking".

Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 557407

Enc. Submitted documents

c: Requestor
(w/o enclosures)