



The Attorney General of Texas

JIM MATTOX
Attorney General

June 18, 1984

Supreme Court Building
P. O. Box 12548
Austin, TX. 78711-2548
512/475-2501
Telex 910/874-1367
Telecopier 512/475-0266

Honorable Ed Kinkeade, Chairman
Dallas County Juvenile Board
Dallas County Courthouse
600 Commerce Street
Dallas, Texas 75202

Open Records Decision No. 417

Re: Whether records of Dallas
County Child Support Department
are public information

714 Jackson, Suite 700
Dallas, TX. 75202-4506
214/742-8944

Dear Judge Kinkeade:

4824 Alberta Ave., Suite 160
El Paso, TX. 79905-2793
915/533-3484

A member of the public has requested that the Dallas County Child Support Department, a division of the Dallas County Juvenile Department, disclose the names and addresses of all persons making child support payments through the Child Support Department. The Internal Revenue Service has asked Dallas County Data Services to provide terminal access into Data Services' computerized child support files. You ask whether these records are available under the Open Records Act, article 6252-17a, V.T.C.S.

1001 Texas, Suite 700
Houston, TX. 77002-3111
713/223-5886

The threshold question is whether the Dallas County Child Support Department is subject to the Open Records Act. After examining article 5139JJJ, V.T.C.S., and quoting from Open Records Decision No. 204 (1978), the San Antonio Court of Appeals recently rejected the argument that the Webb County Juvenile Board is an extension of the "judiciary," which is not subject to the act, section 2(1)(G), and instead concluded that the board is a "governmental body" under the act. Benavides v. Lee, No. 04-82-00543-CV (Tex. App. - San Antonio, Dec. 21, 1983) (not yet reported). For purposes of this opinion, therefore, we conclude that the Dallas County Juvenile Board, created and governed by article 5139UUU, V.T.C.S., is a "governmental body" subject to the Open Records Act. We further conclude that the Dallas County Juvenile Probation Department, also created by article 5139UUU, and the Dallas County Child Support Department, which is a division of the Dallas County Juvenile Probation Department, are subject to the act.

806 Broadway, Suite 312
Lubbock, TX. 79401-3479
806/747-5238

4309 N. Tenth, Suite B
McAllen, TX. 78501-1685
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205-2797
512/225-4191

An Equal Opportunity/
Affirmative Action Employer

You argue that a contract between the Attorney General's Office and Dallas County makes this information confidential. An explanation of the Child Support Department's function is necessary to an understanding of this argument.

The Dallas County Child Support Department administers locally a statewide plan for child support collection as prescribed in Title

IV-D of the Social Security Act. The county took on that responsibility under contract with the Department of Human Resources, the state agency which administers the statewide plan to provide child support collection, parent locator, and paternity determination services to enable the state to participate in federal programs. Human Resources Code §46.001; see also §46.002(a)(4) (contract powers). The Attorney General's Office now performs these duties pursuant to contract with the Department of Human Resources and has continued the contract with Dallas County to carry out the program locally. See Human Resources Code §46.002(a)(4); S.C.R. No. 58, Acts 1983, 68th Leg., at 6269.

You state that the contract between Dallas County and the Attorney General's Office makes the requested information confidential. It contains the following provisions:

I. A.

All functions under this Agreement whether performed by the County or the Attorney General, will be performed in accordance with all Attorney General and federal rules, regulations and directives. Such rules, regulations and directives shall include but not be limited to, State and Federal law, the Code of Federal Regulations

B. The County shall have access to AFDC [Aid to Families with Dependent Children] case records of the Texas Department of Human Resources for use in the administration of this Agreement or in any investigation, prosecution, or criminal or civil proceeding conducted pursuant to this Agreement. The County agrees to safeguard such information and restrict the use or disclosure of any information concerning applicants or recipients to purposes stated in this paragraph. These safeguards shall also prohibit disclosure to any committee or legislative body (Federal, State, or local) of any information that identifies by name or address any such applicant or recipient.

Section 12.003 of the Human Resources Code provides as follows:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or

acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

(b) An offense under this section is a Class A misdemeanor.

Section 46.006 of the Human Resources Code provides:

All files and records on recipients of benefits provided under this chapter and on an alleged father of an illegitimate child are confidential. Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support collection, paternity determination, parent locator, or aid to families with dependent children programs. The department by rule may provide for the release of information to public officials.

See also Human Resources Code §21.012.

The federal law stating the requirements for state participation in Aid to Families with Dependent Children [hereinafter AFDC] contains the following confidentiality provision:

(a) A State plan for aid and services to needy families with children must . . .

. . . .

(9) provide safeguards which restrict the use [or] disclosure of information concerning applicants or recipients to purposes directly connected with (A) the administration of the plan of the State approved under [various sections of title 42 U.S.C.] . . . , (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) [administration of other federal assistance programs], (D) [audits]

42 U.S.C. §602 (1977).

Dallas County has contracted to safeguard information from the department's AFDC files in accordance with these confidentiality provisions. One governmental body may transfer records to another without impairing their confidentiality if a statute or contract requires that the records remain confidential in the recipient's custody. Attorney General Opinions H-836 (1976) (Air Control Board may disclose trade secrets to other state agencies, county and municipal governments); H-683 (1975) (Department of Public Safety may transfer confidential criminal history information to state licensing agencies); H-242 (1974) (need for unrestricted flow of information between state agencies permits transfer of nonpublic information without making it public); M-713 (1970) (state agencies may share information which "shall not be disclosed publicly"); Open Records Decision No. 287 (1981) (private social service agency under contract with DHR must secure confidentiality of information relating to clients).

The requested names and addresses of parents paying child support through the Child Support Department are confidential pursuant to the state and federal laws which the county promised to follow in section IA of the contract, quoted above. Section 46.006 of the Human Resources Code provides that "[a]ll files and records on recipients of benefits provided under this chapter . . . are confidential." Persons who receive child support collection services under chapter 46 of the Human Resources Code are "recipients of benefits provided under this chapter" Applicants for AFDC must assign their rights to child support to the department, while persons who do not request AFDC may receive child support collection services on payment of a fee. Human Resources Code §§46.003, 46.004. Each category of persons receives benefits in the form of child support collection services.

Thus, records relating to recipients of child support collection services are confidential under section 46.006. The name and address of a parent paying child support through the Dallas County Child Support Department which come from Department of Human Resources files, or from county files maintained pursuant to a contractual delegation of authority from the department, will remain confidential in the files of the Dallas County Child Support Department. See Human Resources Code §46.003; 40 T.A.C. §3.6002(a) (AFDC applicant must provide department with information on absent parent). Of course, such information may be available from records of the court which ordered the parent to pay child support. See Open Records Decision No. 144 (1976) (even though conviction information is public when held by court clerk, DPS is not required to disclose it).

We cannot determine from the sample records submitted whether the requested names and addresses came from files subject to section 46.006 of the Human Resources Code. In case any of the names and addresses are not confidential under contract, we will consider your

other argument that the litigation exception, section 3(a)(3) of the Open Records Act, applies to the requested material.

You inform us that in cases where the child support is from a Dallas County court and the child lives in the county, the court retains continuing jurisdiction over the parties and the subject matter. When necessary, the Dallas County District Attorney enforces the child support decree by a civil contempt proceeding using the same cause number as the decree. Thus, you conclude that section 3(a)(3) of the Open Records Act applies to these records because there may be further proceedings in any of these cases.

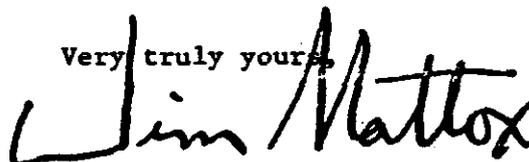
The litigation exception applies only when litigation is pending or reasonably anticipated. See, e.g., Open Records Decision Nos. 331, 328 (1982). The facts you have provided do not indicate that litigation is either pending or reasonably anticipated. First, litigation resulting in the issuance of a child support decree has ended. If enforcement is necessary, the district attorney will initiate new litigation in the form of a separate civil contempt proceeding. Thus, the enforcement litigation is not presently pending. Second, although the district attorney may initiate enforcement proceedings in some cases at an unspecified future time, no evidence before us indicates that those proceedings are at present "reasonably anticipated."

Therefore, section 3(a)(3) does not protect the requested information from disclosure. The department may claim section 3(a)(3) in the future when proceedings to enforce particular support decrees are likely to be initiated. Once the district attorney notifies an individual that he is a defendant in child support proceedings, section 3(a)(3) will no longer render his name and address confidential. The purpose of section 3(a)(3) is to keep from the party information adverse to a governmental body. Open Records Decision No. 349 (1982); see also Attorney General Opinion MW-417 (1981). After he is served in the suit, there is ordinarily no need to keep his name and address confidential.

Your remaining question concerns an Internal Revenue Service request for terminal access to computerized child support files. The IRS has no greater right of access to such materials under the Open Records Act than any member of the public. The Act does not require you to release information in violation of the state and federal regulations incorporated into your contract with the Attorney General's Office. But see Human Resources Code §21.012 (DHR by rule may provide for the release of information to public officials). You have not stated whether the Internal Revenue Service has requested specific records under the Open Records Act; thus we cannot address whether particular information is available to the service under this statute.

Nor may we consider in an Open Records Decision whether some other law gives the Internal Revenue Service a right to terminal access to these files. This question can be answered only in an Attorney General Opinion from an authorized requestor. V.T.C.S. art. 4399.

Very truly yours,



J I M M A T T O X
Attorney General of Texas

TOM GREEN
First Assistant Attorney General

DAVID R. RICHARDS
Executive Assistant Attorney General

Prepared by Susan L. Garrison
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Rick Gilpin, Chairman
David Brooks
Colin Carl
Susan Garrison
Jim Moellinger
Nancy Sutton
Bruce Youngblood