



March 28, 2000

Ms. Tenley A. Aldredge  
Assistant County Attorney  
County of Travis  
P.O. Box 1748  
Austin, Texas 78767

OR2000-1198

Dear Ms. Aldredge:

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# 133432.

The Travis County Juvenile Court (the "juvenile court") received a request for information relating to an incident involving a juvenile offender enrolled in a residential treatment program. The requestor is the juvenile's father. You have submitted the responsive information for our review. As a threshold issue, you question whether the submitted records represent information that is subject to disclosure under the Act. Alternatively, you claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered your arguments and have reviewed the information you submitted.

Section 552.002 of the Government Code provides in relevant part that "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by . . . or . . . for a governmental body[.]" Gov't Code § 552.002(a). The term "governmental body," however, "does not include the judiciary." Gov't Code § 552.003(1)(B). You suggest that the responsive information is not subject to public disclosure under section 552.021 of the Act because it represents records of the Travis County Juvenile Court. You also inform us, however, that the program to which the requested records relate is administered by the Travis County Juvenile Probation Department. In *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App. – San Antonio 1983, no writ), the court held that records relating to administrative responsibilities of the Webb County Juvenile Board were not encompassed by the judiciary exception to the Act. The court cautioned that "[t]he intent of the [Public Information] Act must not be

Act. The court cautioned that “[t]he intent of the [Public Information] Act must not be circumvented by an unnecessarily broad reading of the judiciary exclusion.” *Benavides*, 665 S.W.2d at 152. In Open Records Decision No. 417 at 1 (1984), this office held the Dallas County Juvenile Board, Juvenile Probation Department, and Child Support Department to be governmental bodies for purposes of the Act. More recently, we distinguished between judicial and administrative functions in determining that personnel records of a community supervision and corrections department are subject to the Act. *See* Open Records Decision No. 646 at 3-4 (1996) (stating that the function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Act). Our review of the submitted records persuades us that they relate to an administrative rather than a judicial function of the Travis County Juvenile Court. Accordingly, we conclude that the requested records represent information held by a governmental body under section 552.003(1)(A) of the Government Code. Consequently, they represent public information that is subject to disclosure under the Act unless an exception to disclosure is applicable. *See* Gov’t Code §§ 552.002(a), 552.021.

Alternatively, you claim that the requested information is excepted from public disclosure under sections 552.101 and 552.103 of the Government Code. As section 552.103 is the more inclusive exception, we will consider it first. Section 552.103, the “litigation exception,” as amended by the Seventy-sixth Legislature, provides in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov’t Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To sustain this burden, the governmental body must demonstrate: (1) that litigation is pending or reasonably anticipated and (2) that the information in question is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App. – Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1984, writ ref’d n.r.e.); *see also* Open

Records Decision No. 551 at 4 (1990). Both prongs of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.* The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986).

To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission (“EEOC”), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981). In this instance, you claim that litigation is reasonably anticipated because the requestor has threatened to take legal action against the juvenile court. We have held that such a statement, standing alone, does not establish that litigation is reasonably anticipated under section 552.103. *See* Open Records Decision Nos. 452 at 5 (1986) (requestor’s public statements of intent to sue do not trigger litigation exception), 331 at 1 (1982) (mere threats of litigation are not sufficient to substantiate claim under predecessor statute). Accordingly, we conclude that the requested records are not excepted from public disclosure under section 552.103 of the Government Code.

You also raise section 552.101 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* the public has no legitimate interest in it. *Id.* The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In Open Records Decision No. 262 at 2 (1980), this office stated that information about a patient’s injury or illness might be protected under common law privacy if such injury or illness relates to drug overdoses, acute alcohol intoxication, gynecological or obstetrical illnesses, convulsions and seizures, or emotional and mental distress. In Open Records Decision No. 343 at 2 (1982), we stated that common law privacy protects any highly intimate or embarrassing facts about a person such that disclosure would be “highly objectionable to a person of ordinary sensibilities.”

In this instance, the requested records are the result of a disciplinary action involving a public employee. Generally, such information is not confidential under section 552.101 in conjunction with common law privacy. *See* Open Records Decision No. 444 at 3 (1986) (stating that public has obvious interest in having access to information concerning the qualifications and performances of governmental employees, particularly those who hold sensitive positions). You explain, however, that the requested records reveal intimate and embarrassing facts concerning a particular juvenile offender. Having reviewed the submitted records, we agree that under other circumstances intimate information relating to that particular juvenile would be protected from disclosure under section 552.101 in conjunction with common law privacy. Here, however, the requestor is the juvenile's father. Pursuant to section 552.023 of the Government Code, the requestor has a special right of access to records that otherwise would be protected by his son's common law right to privacy. *See* Gov't Code § 552.023(a). Therefore, the requestor is entitled to access under section 552.023 to the records relating to his son.<sup>1</sup>

In summary, the requested records are subject to disclosure under the Act, the requestor has a special right of access under section 552.023 to the records relating to his son, and the other submitted records are not protected under section 552.103 or section 552.101. Thus, the requested records are not excepted from public disclosure and must be released in their entirety. 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

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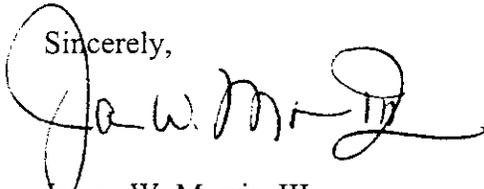
<sup>1</sup>We emphasize that the Juvenile Court should resubmit these same records for another ruling in the event that you receive a request for this information from another individual who would not have a special right of access to it.

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

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

JWM/ch

Ref: ID# 133432

Encl. Submitted documents

cc: Mr. Keith Loggins  
1102 Alegria Road  
Austin, Texas 78757  
(w/o enclosures)