



November 20, 2000

Mr. John Dewey
City Attorney
City of Lake Jackson
5 Oak Drive
Lake Jackson, Texas 77566-5289

OR2000-4454

Dear Mr. Dewey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141401.

The City of Lake Jackson (the "city") received a request for "any and all records" concerning a named individual, including information on charges, place of charges, fines, probation, or any other disciplinary actions taken against the named individual. You claim that the requested information constitutes records of the judiciary, and therefore is not subject to disclosure under the Public Information Act (the "Act"). We have considered your argument and reviewed the submitted information.

Section 552.003(1)(B) of the Government Code excludes the judiciary from the definition of a "governmental body" that is subject to the Act. 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:

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. To fall within the judiciary exception, a document must contain information that pertains to judicial proceedings. *See* Open Records Decision Nos. 527 (1989) (Court Reporters Certification Board not part of judiciary because its records do not pertain to judicial proceedings), 204 (1978) (information held by county judge that does not pertain to proceedings before county court subject to Act).

You inform us that the individual whose records are being requested was arraigned in municipal court on July 25, 2000 and placed on six months deferred adjudication, and that no final judgment has been entered in her case. Upon review of the information submitted to this office, we conclude that a portion of this information is not subject to the Act as it appears to be records of the judiciary. *See* Open Records Decision No. 646 (1996) (specific records regarding individuals on probation and subject to direct supervision of court that are held by community supervision and corrections department are not subject to Act because such records are held on behalf of judiciary). We have marked this information with a blue tag.

With regard to the remaining information, we note that, pursuant to section 552.301(e)(1)(B) of the Government Code, a governmental body is required to submit to this office a copy of the written request for information. You did not, however, submit to this office such a copy. Therefore, as provided by section 552.302, the requested information is presumed to be public. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302). Where information is made confidential by other law or where third party interests are at issue, a compelling reason exists to overcome the presumption that information is open under section 552.302. *See* Open Records Decision No. 150 (1977).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the remaining submitted information is confidential pursuant to section 58.007(c) of the Family Code. You must withhold this information from disclosure under section 552.101 of the Government Code.

To summarize, the documents we have marked with a blue tag consist of records of the judiciary, and therefore they are not subject to disclosure under the Act. The remaining information is confidential as juvenile law enforcement records under section 58.007 of the

Family Code, and therefore must be withheld under section 552.101 of the Government 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 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).

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 the General Services Commission 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,

A handwritten signature in black ink that reads "Michael A. Pearle". The signature is written in a cursive style with a large initial 'M' and 'P'.

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 141401

Encl. Submitted documents