OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

December 28, 2000

Mr. Thomas F. Keever
Assistant District Attorney
Civil Division
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2000-4867

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142703.

Denton County (the "county") received a request for the pre-sentencing reports for two specific cases. You state that Exhibit B contains the pre-sentence report that is applicable for both cases. You state that the report was prepared and is maintained by the Adult Probation Department/Community Supervisions and Corrections Department (the "department") acting as an agent for the presiding district court judge in the county. You claim therefore that the report is a record of the judiciary and not subject to the Public Information Act (the "Act"). We have considered the arguments you raise and reviewed the submitted information.

The Act generally requires the public disclosure of information maintained by a "governmental body." While the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." Gov't Code § 552.003(1) (A), (B). In determining whether a governmental entity falls within the judiciary exception to the Act, this office looks to whether the governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative, functions. 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.

> 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 Public Information Act.

Open Records Decision No. 646 at 4 (1996).

After reviewing your assertions, we find that the requested information is maintained by the department at the direction of district courts in regard to the courts' judicial functions. *See* Gov't Code § 76.002 (requiring district judges trying criminal cases to establish community supervision and corrections departments); *see also* Open Records Decision No. 646 at 4 (1996). Therefore, we find that in regard to its maintenance of the requested information, the department is not a governmental body subject to the Act. Accordingly, the department has no obligations under the Act. Therefore, the county does not have to release the requested document.

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

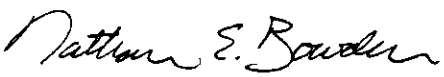
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 Hadassah Schloss at 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 142703

Encl: Submitted documents

cc: Mr. David C. McCue
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(w/o enclosures)