



August 6, 2002

Ms. Nancy H. Platt
Director
Harris County Community Supervision and Corrections Department
49 San Jacinto
Houston, Texas 77002

OR2002-4314

Dear Ms. Platt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166794.

The Harris County Community Supervision and Corrections Department (the “department”) received a request for all letters of temporary suspension or termination for any department employee, including any written response by an employee, since May 1, 2002. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with chapter 76 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 76.006(g) of the Government Code provides that “[a] document evaluating the performance of an officer of the department who supervises defendants placed on community supervision is confidential.” The term “department” in this section means “a community supervision and corrections department established under [chapter 76 of the Government Code].” Gov’t Code § 76.001(4). You have submitted for our review a corrective counseling report relating to the suspension of a department employee, three termination/separation forms regarding the discharge or resignation of department employees, a letter terminating a department employee, a human resources form letter stating that a particular terminated employee is not eligible for rehire, and a department employee’s letter of resignation. Upon review, we determine that these documents do not evaluate the performance of an officer of the department for purposes of section 76.006(g) of the Government Code. Thus, the submitted

documents are not confidential under section 76.006(g) and may not be withheld pursuant to section 552.101 of the Government Code.

You also seek to withhold information concerning an individual on probation, including the individual's name, from the corrective counseling report pursuant to our ruling in Open Records Decision No. 646 (1996). In that decision, we determined that specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department are not subject to the statutory predecessor to the Public Information Act (the "Act"), because such records are held on behalf of the judiciary. Open Records Decision No. 646 (1996) at 3-4. We further determined, however, that a community supervision and corrections department is not itself part of the judiciary, and that administrative records such as personnel files and other records reflecting the day-to-day management of a community supervision and corrections department are subject to the Act. *Id.* Here, we find that the corrective counseling report at issue is an administrative record that pertains to a personnel matter, and is not a specific record regarding an individual probationer held on behalf of the judiciary as contemplated in Open Records Decision No. 646 (1996). Thus, the department may not withhold the probationer's name and the information you have highlighted in yellow pursuant to that decision. Furthermore, you raise no other exceptions to disclosure that pertain to this information in the corrective counseling report. Therefore, we determine that the department must release the name and the other highlighted information to the requestor.

In summary, the department must release the submitted documents to the requestor 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; 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 166974

Enc: Submitted documents

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