



November 1, 2002

Mr. Gordon Bowman
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2002-6140

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171420.

The Travis County Community Corrections and Supervision Department (the "department") received a request for access to "[a]ny and all complaints and/or discipline records of all unit managers within [the] past 5 years." You contend that the requested information constitutes records of the judiciary and is therefore not subject to disclosure under the Public Information Act (the "Act"). In the alternative, you claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

We first address your assertion that the requested documents constitute records of the judiciary. The Act generally requires the disclosure of information maintained by a "governmental body." See Gov't Code § 552.021. While the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." See Gov't Code § 552.003(1) (A), (B). In Open Records Decision No. 646 (1996), this office determined that a community supervision and corrections department is a governmental body for purposes of the Act, and that its administrative records, such as personnel records and other records reflecting day-to-day management decisions, are subject to the Act. *Id.* at 5. On the other hand, we also ruled 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 Act because such records are held on behalf of the judiciary. *Id.*; see Gov't Code § 552.003. In this instance, the requestor seeks personnel records of department employees, and the submitted information relates to administrative, rather than judicial, functions of the department. We therefore find that the submitted information does not constitute judicial records for purposes of the Act. See *id.* at 2-3 (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ)) (in determining whether governmental entity falls within judiciary exception, this office looks to whether

governmental entity maintains relevant records as agent of judiciary with regard to judicial, as opposed to administrative, functions). Accordingly, the submitted information is subject to the Act, and we will address the exceptions you claim thereunder.

You assert that the submitted documents constitute documents evaluating the performance of department employees that are confidential by law. 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 [a community supervision and corrections] department who supervises defendants placed on community supervision is confidential." *See also* Gov't Code § 76.001(4) (defining "department"). However, the documents at issue here are complaints regarding employees' alleged inappropriate conduct; they are not employee evaluations. Accordingly, we find that these documents are not made confidential by section 76.006 and may not be withheld under section 552.101 on that basis.

You also assert that portions of the submitted information are protected by common law privacy. Section 552.101 also encompasses the common law right of privacy, which excepts from disclosure information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common law privacy doctrine to files of an investigation into allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the accused individual responding to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* Based on *Ellen*, a governmental body must withhold information that would tend to identify a witness or victim.

Because the submitted records do not contain adequate summaries of the complaints at issue, the submitted documents must be released. However, before releasing these documents, in accordance with the holding in *Ellen*, the department must redact the information that we have indicated tends to identify complainants and witnesses.

We note that a portion of the remaining information may be excepted under section 552.117. Pursuant to this section, the department must withhold the home addresses, home telephone numbers, social security numbers, and family member information of current or former employees who made an election prior to the date this request for information was received to keep their personal information confidential. *See* Gov't Code §§ 552.117(1), .024. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). We have marked information that must be withheld if a timely election was made. If a timely election was not made, this information must be released.

In summary, pursuant to section 552.101 and common law privacy principles, the department must redact the information we have marked as tending to identify victims of and witnesses to incidents of alleged sexual harassment. The information we have marked as being excepted under section 552.117 must be withheld only if the employee made a timely election under section 552.024; otherwise it must be released. The remaining information must be released.

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

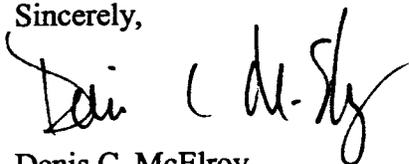
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Mr. Gordon Bowman - Page 5

Ref: ID# 171420

Enc. Submitted documents

c: Ms. Nanci Wilson
KEYE News
10700 Metric Blvd.
Austin, Texas 78758
(w/o enclosures)