



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 22, 2003

Mr. John Feldt  
County of Denton  
P.O. Box 2850  
Denton, Texas 76202

OR2003-2667

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179755.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for a specified e-mail of a probation officer. You contend that the requested information is not subject to the Public Information Act (the "Act") because the information consists of records of the judiciary. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your claim that chapter 552 of the Government Code does not apply to the requested information. This office has concluded that specific records held by a community supervision and corrections department regarding individuals on probation and subject to the direct supervision of a court are not subject to chapter 552 because such records are held on behalf of the judiciary. *See* Open Records Decision No. 646 (1996); *see also* Gov't Code § 552.003(1)(B) (definition of governmental body does not include judiciary). You state that the records in Exhibit C "are specific records regarding an individual who was on probation and subject to the direct supervision of a court." However, you also state that Exhibit C was maintained "as part of the [district attorney's] prosecution files." Therefore, Exhibit C is held by the district attorney, not by a community supervision and corrections department. Accordingly, we find that the requested information is subject to chapter 552 of the Government Code and must be released unless it comes within the scope of an exception to disclosure under chapter 552. Thus, we will address the arguments you have raised under chapter 552 of the Government Code.

Section 552.108 of the Government Code states in pertinent part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

....

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [required public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You state that Exhibit C “was generated when criminal litigation was pending in Cause Number F-96-0147-C.” Further, you indicate that the information in Exhibit C reflects the mental impressions and legal reasoning of attorneys representing the state in the course of its criminal prosecution. Based on your representations and arguments and our review of the submitted information, we conclude that you have established the applicability of section 552.108(b)(3) to Exhibit C, and it may be withheld accordingly. As we are able to make this determination, we need not address your remaining arguments.

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 Dep't of Pub. 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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/lmt

Ref: ID# 179755

Enc: Submitted documents

c: Ms. Mary Perry  
2108 Lakehaven Lane  
Denton, Texas 76208  
(w/o enclosures)