



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 21, 2003

Mr. Joel K.B. Winful
Assistant District Attorney
County of Dallas
Administration Building
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2003-5006

Dear Mr. Winfun:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184561.

The Dallas County Clerk (the "clerk") received a request for all court orders related to a specific bail bond, including "any judgment nisi, any order refunding cash deposit, any order denying refund or cash deposit, and all orders that released or transferred cash deposit to the Texas comptroller, or to any other person, entity or governmental authority." You state that you have no objection to releasing most of the requested information. You claim, however, that the orders that released or transferred a cash deposit to the Texas comptroller, or to any other person, entity or governmental authority are excepted from disclosure under section 552.101 of the Government Code, or, alternatively, that these orders are judicial records not subject to the Public Information Act (the "Act"). We have considered your arguments and reviewed the submitted representative sample of information.¹

The information requested appears to be maintained by the county clerk as an agent of the judiciary and is therefore not subject to the Public Information Act (the "Act"). The Act applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 552.002(a)(1). However, a “governmental body” under the Act “does not include the judiciary.” Gov’t Code § 552.003(1)(B). Information that is “collected, assembled or maintained by . . . the judiciary” is not subject to the Act but is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” Gov’t Code § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). In addition, information that is “collected, assembled, or maintained . . . for the judiciary” by a governmental body acting as an agent of the judiciary is not subject to the Act. *Id.*; *cf.* Attorney General Opinions DM-166 (1992), H-826 (1976); Open Records Decision Nos. 610 (1992), 572 (1990), 513 (1988), 274 (1981). Generally, in performing its duties, we believe that the clerk acts as an agent of the judiciary.

It is our understanding that the clerk maintains the requested information on behalf and at the direction of the judiciary, and that the information is created and maintained solely for judicial purposes. Based on this understanding, we conclude that the requested information constitutes records maintained for the judiciary under section 552.0035(a) of the Government Code. Therefore, the clerk has no obligation under the Act regarding the release of the requested information. The release of the requested information is within the discretion of the court. *See* Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)).

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 184561

Enc. Submitted documents

c: Mr. Ross Teter
c/o Joel K. B. Winfun
County of Dallas
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Dallas, Texas 75202
(w/o enclosures)