



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2004

Ms. Sheri Bryce Dye
Assistant Criminal District Attorney
Bexar County - Civil Section
300 Dolorosa, Suite 4049
San Antonio, Texas 78205

OR2004-8111

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209681.

Judge John Specia, Jr. of the 225th District Court in Bexar County (the “judge”) received a request for twelve categories of information, including all communications to or from the judge as a member of the Supreme Court Task Force on Foster Care (“SCTF”). You state that the judge does not have information responsive to eleven of the requested categories of information.¹ You claim that the remaining requested information relating to any communications to or from the judge as a member of the SCTF is not subject to the Act. We have considered your arguments and reviewed the submitted information.

You claim that the submitted information constitutes judicial records that are not subject to the Act. We note that the Act only 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 Code § 552.002(a)(1). It does not apply to records of the judiciary. *See id.* § 552.003(1)(B). Information that is “collected, assembled or maintained by or for the judiciary” is not subject to the Act. *See id.* § 552.0035(a); *see also* Tex. Sup.

¹ We note that the Public Information Act (the “Act”) does not require the judge to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 (1996) at 4 (“function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act.”). You state that the “Supreme Court of Texas appointed the Supreme Court Task Force on Foster Care to serve as an advisory body and oversee the Court Improvement Project in Texas[.]” Furthermore, you state that the submitted information was “collected, assembled and maintained for the judiciary.” Based on your representations and upon review, we agree that the submitted information constitutes judicial records that are not subject to disclosure under the Act and need not 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 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 209681

Enc. Submitted documents

c: Mr. Gary W. Gates
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(w/o enclosures)