



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2004

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2004-10683

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 216270.

The Travis County Domestic Relations Office (the "DRO") received a request for information regarding a specified DRO case. You claim that the requested information is not subject to the Act. In the alternative, you claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the arguments you make and reviewed the submitted representative sample of information.¹

Records of the judiciary are specifically excepted from the provisions of chapter 552 of the Government Code. Gov't Code § 552.003(1)(B). In *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ), the court explained the purpose of the judiciary exception as follows:

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.

The judiciary exception... is important to safeguard judicial proceedings and maintain the independence of the judicial branch of government, preserving statutory and case law already governing access to judicial records. But it must not be extended to every governmental entity having any connection with the judiciary.

Benavides v. Lee, 665 S.W.2d at 152. The court in *Benavides* found the Webb County Juvenile Board not to be a part of the judiciary. In so finding, the court reasoned that an analysis of the judiciary exception should focus on the governmental body itself and the kind of information requested. *Id.* at 151; *see* Open Records Decision No. 572 (1990).

In *Delcourt v. Silverman*, 919 S.W.2d 777 (Tex. App.--Houston [14th Dist.] 1996, writ denied), the court held that a guardian ad litem in a child custody case was entitled to absolute judicial immunity. In reaching this conclusion, the court considered the function of the guardian ad litem. If the guardian ad litem was functioning as an actual functionary or arm of the court, the ad litem should be entitled to judicial immunity. *Delcourt*, 919 S.W.2d at 784. The court noted that other courts had determined that the function of a guardian ad litem in child custody cases was basically to act as an extension of the court when the ad litem is investigating facts and reporting to the court what placement was in the child's best interest. *Id.* at 785, citing *Ward v. San Diego County Dep't of Social Services*, 691 F. Supp. 238, 240 (S.D. Cal. 1988). The court concluded that so long as the appointment of the guardian ad litem contemplates the ad litem acting as an extension of the court, the ad litem is entitled to absolute judicial immunity.

You state that “[i]n this case, the court had appointed the DRO to act as guardian ad litem of the children in a child custody case.” *See* Fam. Code § 230.004(a)(6) (domestic relations office may represent child as guardian ad litem where termination of parent-child relationship is sought or where conservatorship of or access to child is contested). You also state that “[i]n acting as guardian ad litem in the child custody case, the DRO gathered relevant information regarding the case, . . . received copies of pleadings from the parties in the case, and made notes regarding the case. This information was used by the DRO to generate reports and make recommendations to the court.” We conclude that the DRO, as guardian ad litem, was acting “as an arm of the court.” *See Delcourt*, 919 S.W.2d at 781; Open Records Decision No. 646 (1996) at 4. (“The function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act”). Therefore, the submitted information is not subject to disclosure under the Act.²

²In light of our conclusion that the requested records are not subject to disclosure under the Act, we need not address your section 552.101 claim.

Access to a court's case records is governed by common law, other statutory law, and rules of criminal and civil procedure. A request for a court's case records should be directed to the clerk of the court.

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).

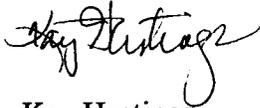
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 216270

Enc: Submitted documents

c: Ms. Marsha Hutchinson
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(w/o enclosures)