



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2005

Mr. Jeffrey D. Van Niel
Staff Counsel
Harris County CSCD
49 San Jacinto, Suite 610
Houston, Texas 77002

OR2005-08899

Dear Mr. Van Niel:

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# 233351.

The Harris County Community Supervision and Corrections Department (the "department") received a request for any information pertaining to a recently updated probation supervision policy, including specified correspondence and the policy itself. You state that you do not have any information responsive to a portion of the request.¹ You state that you have released some of the requested information, but you claim that the submitted information is not subject to disclosure under the Act. We have considered your arguments.²

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

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²You inform us, and provide documentation showing, that the department asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see also Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

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.

You argue that “[a] court policy is the property of the court that has adopted it and, as a judicial record, is not subject to disclosure by the [d]epartment pursuant to a request under the Act.” We also understand you to assert that the submitted e-mails from a judge to the department and between department members concerning the new policy are also not subject to the Act. In this instance, we agree that the submitted information is held by the department on behalf of the judiciary and, therefore, is not subject to disclosure under the Act. See *id.* at 2-3; *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).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 233351

Enc. Submitted documents

c: Mr. Andrew Tilghman
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(w/o enclosures)