



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2006

Ms. M. Ann Montgomery
Assistant County and District Attorney
Ellis County
1201 N. Hwy 77, Suite 104
Waxahachie, Texas 75165-7832

OR2006-04772

Dear Ms. Montgomery:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 248494.

The Ellis County District Clerk (the "district clerk") received a request for:

1) A copy of a document and/or documents that show the number of actual cases that went to jury trial conducted within the last FIVE fiscal years relating to a) aggravated sexual assault; b) aggravated sexual assault of a child; c) indecency with a child; d) indecency with a child-contact; specifically, I want to know how many trials on the given charges were conducted in the 40th District Court, Honorable Gene Knize presiding[;]

2) A copy of a document and/or documents that show the number of plea deals or plea bargains accepted within the last FIVE fiscal years relating to a) aggravated sexual assault; b) aggravated sexual assault of a child; c) indecency with a child; d) indecency with a child-contact; specifically, I want to know how many plea bargains were accepted by the 40th District Court, Honorable Gene Knize presiding[;]

(Note: If these documents also include case numbers and the names of the accused/convicted, I am requesting that information be made public as well.)

3) A copy of the 40th District Court calendar, specifically I want to know when the court holds jury trials, pre-trial conferences, or hearings of any kind (Ex: M-F, 9-5)[.]

You state that you have released information regarding Item 3, but claim that the remaining information is not subject to the Act. We have considered your argument and reviewed the submitted information.

You state that the district clerk maintains a case disposition database which is used to create a monthly report for the Office of Court Administration, which is an agent of the judiciary. You claim that the information in this database is information collected, assembled, or maintained for the judiciary and is not public information under the Act. Upon review of your arguments and the information at issue, we agree that the information at issue consists of records held by the district clerk as the agent of the judiciary. Records of the judiciary are not subject to required public disclosure under the Act.¹ See Gov't Code §§ 552.003(1)(A), (B) (definition of "governmental body" under Act specifically excludes the judiciary), .021 (Act generally requires disclosure of information maintained by "governmental body"). We therefore conclude the district clerk need not release the submitted information in response to the present request. We note, however, that release of this 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

¹Records of the judiciary may be public pursuant to other sources of law. Attorney General Opinions DM-166 at 2-3 (1992) (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974); see *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released).

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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 248494

Enc. Submitted documents

c: Mr. Joey Dauben
The Ellis County Observer
1408 Red Oak Creek Road
Ovilla, Texas 75154
(w/o enclosures)