



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2008

Mr. Lewis R. Haws
Assistant District Attorney
Cameron County District Attorney's Office
P.O. Box 2299
Brownsville, Texas 78522-2299

OR2008-13567

Dear Mr. Haws:

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# 323354.

The Cameron-Willacy Counties Community Supervision and Corrections Department (the "department") received a request for a pre-trial diversion packet pertaining to a named individual. You contend that the requested information is not public information that is subject to the Act. In the alternative, you claim that the information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered your arguments and reviewed the information you submitted.

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 id.* § 552.003(1)(A)-(B). In Open Records Decision No. 646 (1996), this office determined that a community supervision 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. *See* ORD 646 at 5. However, we also

¹Although you also initially raised sections 552.103, 552.108, 552.111, and 552.130 of the Government Code, you have submitted no arguments in support of the applicability of those exceptions. Accordingly, this decision does not address sections 552.103, 552.108, 552.111, and 552.130. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating reasons why its claimed exceptions apply to information at issue). We note that sections 552.023 and 552.305 of the Government Code, which you also initially cited, are not exceptions to disclosure under subchapter C of the Act.

determined 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 state that the submitted information is held by the department and is related to an individual who is participating in a pretrial diversion program. We understand that the individual is participating in pretrial diversion under the supervision of the department as an agent of the judiciary. Based on your representations and our review of the information at issue, we conclude that the submitted information that specifically concerns the individual in question is not subject to the Act and need not be released. See ORD 646 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). We conclude that the remaining information, which we have marked, is an administrative record of the department. See ORD 646 at 5. Thus, the marked information is subject to the Act, and we will address your exception to its disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). You contend that the remaining document should be withheld to protect an individual's privacy. We find that the document in question is not specifically related to an individual participating in pretrial diversion and does not otherwise contain any information that is highly intimate or embarrassing or not a matter of legitimate public interest. We therefore conclude that the remaining document may not be withheld from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy and must 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

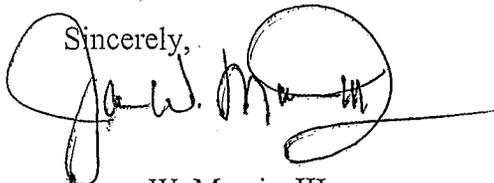
from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jh

Ref: ID# 323354

Enc: Submitted documents

c: Mr. John T. Blaylock
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(w/o enclosures)