



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 8, 2009

Ms. Lynne Wilkerson  
General Counsel  
Bexar County Juvenile Probation Department  
235 East Mitchell Street  
San Antonio, Texas 78210-3845

OR2009-17331

Dear Ms. Wilkerson:

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# 363536.

The Bexar County Juvenile Probation Department Domestic Relations Office (the "DRO") received a request for the licensing information, disciplinary history, and complaint history on file with the DRO regarding a named counselor from a specified period of time. You state you have provided a portion of the requested information to the requestor, and we note you have redacted a social security number pursuant to section 552.147 of the Government Code in this information.<sup>1</sup> You claim that the remaining requested information is not subject to the Act. Alternatively, you claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note that you have redacted an e-mail address from the information already released to the requestor in Exhibit B. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code §§ 552.301(a), 301(e)(1)(D). You do not assert, nor does our review of our records indicate, that the DRO is authorized to withhold the redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. The failure to provide this office with requested information is a violation of

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

section 552.301 of the Government Code because it deprives us of the ability to determine whether information may be withheld. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), .302. In this instance, because we can discern the nature of the redacted information, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the DRO should refrain from redacting any information that it submits to this office in seeking an open records ruling.

Now we address your arguments for the information at issue in Exhibits C and D. Records of the judiciary are specifically excepted from the provisions of the Act. *See id.* § 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:

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*, 665 S.W.3d 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. *See id.* at 151; *see also* Open Records Decision No. 572 (1990). This office has found that to fall under the judiciary exclusion, requested records must contain information that pertains to judicial proceedings and be subject to direct supervision of a court. *See* Open Records Decision No. 671 (2001) (citing Open Records Decision No. 646 at 5 (1996)).

You inform us that the DRO derives its authority from chapter 203 of the Family Code and was created "for the primary purpose of providing support to the [Bexar County] civil courts in cases involving the parent-child relationship." *See* Family Code §§ 203.002 (commissioner's court may establish domestic relations office), .003 (domestic relations office shall be administered as provided by commissioner's court or juvenile board). You explain that the DRO provides many services to the Bexar County civil courts, including overseeing the list of approved social study providers for court appointments. In this instance, the submitted information in Exhibits C and D pertains to complaints and subsequent investigations about social study providers on the list maintained for the courts by the DRO. Therefore, we understand that the DRO is acting "as an arm of the court" in maintaining the records at issue. *See Delcourt v. Silverman*, 919 S.W.2d 777 (Tex. App.—Houston [14th Dist.] 1996, writ denied) (finding that guardian ad litem in child custody case was entitled to judicial immunity because ad litem was functionary or arm of court when engaged in investigating facts and reporting to court); *see also* Open Records Decision No. 646 at 4 (finding that function that governmental entity performs determines whether entity falls within judiciary exception to the Act). Accordingly, we agree that Exhibits C and D are records of the judiciary that are not subject to disclosure under the Act.

Therefore, the DRO is not required to comply with this request under the Act. Because the Act is not applicable in this instance, we need not address your alternative arguments for this information.

We note that the e-mail address the DRO has redacted in Exhibit B may be subject to section 552.137 of the Government Code.<sup>2</sup> Section 552.137 makes certain e-mail addresses confidential, providing the following:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract;

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public; or

(5) provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of this code, or receiving orders or decisions from a governmental body.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under section 552.137. To the extent the redacted e-mail address falls under any of the exceptions listed under subsection 552.137(c), the e-mail address may not be withheld under section 552.137. Otherwise, the DRO must withhold the redacted e-mail address under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

In summary, Exhibits C and D constitute records held by the DRO on behalf of the judiciary and are not subject to disclosure under the Act. The DRO must withhold the redacted e-mail address in Exhibit B under section 552.137, unless the owner of the address has affirmatively consented to its release or it falls under any of the exceptions listed under subsection 552.137(c). As no other exceptions to disclosure are raised, the remaining information in Exhibit B must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 363536

Enc. Submitted documents

c: Requestor  
(w/o enclosures)