



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2010

Ms. Mia Settle  
General Counsel  
Harris County Community Supervision and Corrections Department  
49 San Jacinto  
Houston, Texas 77002

OR2010-18981

Dear Ms. Settle:

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# 403114.

The Harris County Community Supervision and Corrections Department (the "department") received two requests for the video of a specified incident. You have informed us that since the time of your initial request for an opinion from this office, the department has obtained software that enables it to redact the requested video. Accordingly, a redacted copy of the video has been given to one of the requestors, the State Office of Risk Management ("SORM"), as an intergovernmental transfer.<sup>1</sup> As to the other request, you argue that the submitted video recording is not subject to the Act. In the alternative, you claim that the submitted video recording is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

First, we address your assertion that the requested information is a judicial record not subject to the Act. The Act generally requires the disclosure of information maintained by a "governmental body." Gov't Code § 552.002(a)(1). A governmental body under the Act "does not include the judiciary." *Id.* § 552.003(1)(B). However, 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 files and other records reflecting the day-to-day management of the department are subject to Act. ORD 646 at 5; *see also Benavides v. Lee*, 665 S.W.2d 151

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<sup>1</sup> Accordingly, in a letter dated December 9, 2010, you inform us the department withdraws its request for a ruling in regards to the request from SORM, as SORM is satisfied with the information you provided.

(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). In contrast, specific records held by a community supervision and corrections department that concern individuals who are on probation and subject to the direct supervision of a court are not subject to the Act, because such records are held on behalf of the judiciary. ORD 646 at 5. The information at issue is a surveillance video used for day-to-day management of the department. Therefore, we conclude the submitted video is subject to the Act and must be released unless it falls within an exception to public disclosure.

Further, we note, and you acknowledge, that the department has not complied with the time periods prescribed by section 552.301 of the Government Code for seeking an open records decision from this office. See Gov't Code § 522.301(b), (e). When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. See Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); see also Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. See Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we consider your argument under this section.

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 information protected by the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional stress); 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

You inform us that the video recording shows the department's substance abuse and mental health treatment facility, and contains images of individuals who have been ordered to obtain treatment at the facility for substance abuse and/or mental health issues. Upon review, we agree that the images of these individuals are highly intimate or embarrassing and of no legitimate public interest. Therefore, this information must be withheld under section 552.101 in conjunction with common-law privacy. You state that the department has the technical capability to redact the images of these individuals from the video recording, therefore the recording must be released to the requestor with the confidential information redacted. Because our ruling is dispositive, we do not address your remaining arguments against disclosure.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID# 403114

Enc. Submitted documents

c: Requestor  
(w/o enclosures)