



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 20, 2011

Ms. Mia Settle  
General Counsel  
Harris County Community Supervision and Corrections Department  
49 San Jacinto, Suite 600  
Houston, Texas 77002

OR2011-13593

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# 430424 (Cause # 0943789).

The Harris County Community Supervision and Corrections Department (the "department") received a request for information regarding the court which is supervising the case of a named person and information generated by the department and that supervisory court regarding the requestor's previous requests for information. You state the department has released some information to the requestor. You claim the submitted information is not public information subject to disclosure under the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.137 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>You inform us the department withdraws its arguments under sections 552.103, 552.111, 552.132, 552.134, 552.142, and 552.1425 of the Government Code. We note although you state you withdraw your argument under section 552.132, you also cite section 552.132. However, you have not presented arguments explaining how this exception applies to the submitted information, as required by section 552.301 of the Government Code. Therefore, this ruling does not address that exception.

First, we address your assertion that the requested information constitutes judicial records 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 the Act. ORD 646 at 5; *see also 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). 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.

Most of the information at issue concerns the department’s responses to requests for public information under the Act. Responding to public information requests is part of the day-to-day management of the department. Communications regarding the response process do not constitute specific records held by the department on behalf of the judiciary concerning individuals who are on probation and subject to the direct supervision of the court. Therefore, we conclude the most of submitted information is subject to the Act and must be released unless it falls within an exception to public disclosure. However, we find a portion of the submitted information in Exhibit 4, which we have marked, constitutes specific records held by the department that concern an individual who is on probation and subject to the direct supervision of a court, and which are held on behalf of the judiciary. Thus, this information consists of records of the judiciary not subject to the Act and need not be released in response to the instant request.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7. First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body

must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5).

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state portions of the remaining submitted information consist of privileged attorney-client communications. You have identified most of the parties to the communications as department employees and attorneys. You state the communications were made for the purpose of facilitating the rendition of legal services, and were intended to be, and have remained, confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to most of the remaining submitted information. Accordingly, the department may generally withhold the remaining information in Exhibit 4 and, with the exception of information you have marked as public, the information in Exhibits 5 through 16 under section 552.107 of the Government Code.<sup>2</sup> However, we note the otherwise privileged e-mail strings in Exhibits 4, 14, and 15 contain communications with non-privileged parties. To the extent these non-privileged e-mails, which we have marked, exist separate and apart from the otherwise privileged e-mail strings, these e-mails may not be withheld under section 552.107(1). In that case, we will address your remaining arguments for these non-privileged e-mails. As to the remaining information you seek to withhold under section 552.107, we note Exhibit 2 is a communication with a party you have not identified as privileged. In addition, you have not established that Exhibit 3 constitutes communications or that it involves privileged parties. *See* ORD 676 at 8 (governmental body must inform this office of identities and capacities of individuals to whom each communication at issue has been made; this office cannot necessarily assume that communication was made only among categories of individuals identified in section 552.111); *see generally* Gov’t Code § 552.301(e)(1)(A); *Strong v. State*, 773 S.W.2d 543, 552 (Tex. Crim. App. 1989) (burden of establishing attorney-client privilege is on party asserting it). Therefore, Exhibits 2 and 3 may not be withheld under section 552.107(1).

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<sup>2</sup>Because our ruling is dispositive as to this information, we do not address your remaining arguments against 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 information protected by other statutes, such as chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. You argue the remaining information consists of CHRI of the named person at issue. Upon review, we find the remaining information does not consist of CHRI for purposes of chapter 411 of the Government Code and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You raise section 552.108 for the non-privileged e-mail in Exhibit 4. However, this e-mail concerns a complaint made by the requestor regarding one of his requests for information. You have not explained how this e-mail “deals with the detection, investigation, or prosecution of crime.” *Id.* § 552.108(a). Thus, the department may not withhold this information under section 552.108(a)(2) of the Government Code.

You assert Exhibit 2 contains an e-mail address subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). However,

the requestor has a right of access to his own e-mail address under section 552.137(b). *See id.* § 552.137(b) (e-mail address of member of the public may be released with that individual's consent). Accordingly, the department may not withhold the e-mail address at issue from this requestor under section 552.137 of the Government Code.<sup>3</sup>

In summary, the information we have marked in Exhibit 4 is not subject to the Act and need not be released because it is considered to be records of the judiciary. With the exception of the information you have marked as public, the department may withhold the remaining information in Exhibits 4 through 16 under section 552.107 of the Government Code; however, if the non-privileged communications we have marked in the otherwise privileged e-mail strings in Exhibits 4, 14, and 15 exist separate and apart from the e-mail strings in which they appear, then the department may not withhold the marked non-privileged communications under section 552.107(1) and must release them. The remaining information must be released to the requestor.

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

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<sup>3</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision. Accordingly, should the department receive another request for this information from a different requestor, the department is authorized to withhold the requestor's e-mail address without requesting another decision from this office.

Ref: ID # 430424

Enc. Submitted documents

c: Requestor  
(w/o enclosures)