



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 29, 2017

Ms. Annalisa Davila  
Deputy Director  
El Paso County Community Supervision and Corrections Department  
800 East Overland, Suite 100  
El Paso, Texas 79901

OR2017-22343

Dear Ms. Davila:

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# 678353 (Ref No. 2017-04).

The El Paso County Community Supervision and Corrections Department (the "department") received a request for information pertaining to the requestor and other candidates who applied for a specified position with the department. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, you state the department received the

request for information on July 3, 2017. We note July 4, 2017, was a department holiday. Accordingly, the ten-business-day deadline was July 18, 2017, and the fifteen-business-day deadline was July 25, 2017. However, the department submitted the information required under both subsections 552.301(b) and 552.301(e) in an envelope meter-marked July 26, 2017. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the department failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). The department claims sections 552.101 and 552.122 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your arguments under this section for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

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 exception encompasses information that other statutes make confidential. Section 76.006(g) of the Government Code provides that “[a] document evaluating the performance of an officer of the department who supervises defendants placed on community supervision is confidential.” *Id.* § 76.006(g). The term “department” in this section “means a community supervision and corrections department established under [chapter 76 of the Government Code].” *Id.* § 76.001(4). You claim the submitted information evaluates the performance of officers of the department who supervise defendants placed on community supervision. Upon review, we find some of the information at issue evaluates the performance of officers of the department. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 76.006(g) of the Government Code. However, we find none of the remaining information evaluates the performance of an officer of the department. Thus, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 76.006(g) of the Government Code. As no further exceptions to disclosure have been raised, the department must release the remaining information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/gw

Ref: ID# 678353

Enc. Submitted documents

c: Requestor  
(w/o enclosures)