



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2017

Ms. Gina Licata Adams
General Counsel
Bexar County Juvenile Probation Department
301 East Mitchell Street
San Antonio, Texas 78210-3845

OR2017-22722

Dear Ms. Adams:

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# 678582.

The Bexar County Juvenile Probation Department (the "department") received two requests from different requestors for information related to a specified incident. The first requestor seeks all documents, audio or video related to the incident that may be used to determine the requestor's employment status. The second requestor seeks all video recordings where the requestor was involved related to the incident. You state the department does not have information responsive to portions of the requests.¹ You state you have released some information to the first requestor. You claim the submitted information is not subject to the Act or, alternatively, that it is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

The Act is applicable only to "public information." *See* Gov't Code § 552.021. Section 552.002(a) of the Government Code defines "public information" as follows:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). However, section 552.003 provides that, for purposes of the Act, the term “governmental body” does not include the judiciary. *Id.* § 552.003(1)(B). Information that is “collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules” and is not subject to the Act. *See id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). In determining whether information held by a governmental body falls within the judiciary exception to the Act, this office looks to whether the governmental body maintains the relevant records as an agent of the judiciary in a judicial, as opposed to an administrative, capacity. *See* Open Records Decision No. 646 at 3-4 (1996). This office has determined a community supervision and corrections department is a governmental body for purposes of the Act, and its administrative records, such as personnel files and other records reflecting day-to-day management of the department, are subject to the Act. *Id.* at 5. In contrast, specific records held by a community supervision and corrections department that concern individuals who are subject to the direct supervision of a court are not subject to the Act because such records are held on behalf of the judiciary. *Id.*

You assert the submitted documents are records concerning a juvenile probationer maintained by the department on behalf of the judiciary. Based on your representation and our review, we find some of the submitted information is held by the department on behalf of the judiciary and, therefore, is not subject to disclosure under the Act. However, we find the remaining information consists of administrative records, which reflect the day to day

management of the department and, thus, is subject to the Act. Accordingly, we will consider your claimed exceptions for this information.

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 made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state the remaining information is confidential under section 261.201(a) of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). We note the department is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, pursuant to section 261.405(b) of the Family Code, the department is required to report alleged abuse or neglect in a juvenile justice program to the Texas Juvenile Justice Department (the “TJJD”) and a local law enforcement agency for investigations.² *See id.* § 261.405(b); Act of May 30, 2017, 85th Leg., R.S., H.B. 249, § 6 (to be codified at Fam. Code § 261.405(c)) (the TJJD shall make a prompt, thorough investigation if the TJJD receives report of alleged abuse, neglect, or exploitation in any juvenile justice program or facility). You state the remaining information consists of an “internal investigation of child abuse and neglect at a secure post-adjudication correctional facility. . . which becomes part of TJJD’s Chapter 261 investigation.” Based upon your representations and our review, we conclude the information at issue consists of reports, records, or working papers used or developed in investigations made under chapter 261 of the Family Code. Therefore, the remaining information is confidential pursuant to section 261.201 of the Family Code and

²Effective December 1, 2011, the Texas Juvenile Probation Commission became known as the Texas Juvenile Justice Department. *See* Hum. Res. Code § 201.001(b).

must be withheld under section 552.101 of the Government Code.³ See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

In summary, some of the submitted information is not subject to the Act, and the department need not release it in response to this request. The department must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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, 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 678582

Enc: Submitted documents

c: 2 Requestors
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.