



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2017

Mr. Phillip J. Smith
Assistant District Attorney
Smith County Criminal District Attorney's Office
100 North Broadway Avenue, 4th Floor
Tyler, Texas 75702

OR2017-26951

Dear Mr. Smith:

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# 685849.

The Smith County Community Supervision and Corrections Department (the "department") received a request for documents provided to specified types of offenders, information related to a named individual, and a completed business affidavit. You state you have released some information to the requestor. You state you do not possess information responsive to the portion of the request seeking the completed business affidavit.¹ You argue the submitted information is not subject to the Act. We have considered your argument and reviewed the submitted information.

The Act is applicable to information that is "written, produced, collected, assembled, or maintained ... in connection with the transaction of official business ... by a governmental body[.]" Gov't Code § 552.002(a)(1). However, the Act's definition of "governmental body" "does not include the judiciary." *Id.* § 552.003(1)(B). In Open Records Decision No. 646 (1996), this office determined a community supervision and corrections department is a governmental body for purposes of the Act, and its administrative records, such as

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 concerning individuals who are on probation and subject to the direct supervision of a court are not subject to the Act, as such records are held on behalf of the judiciary. ORD 646 at 5.

You inform us the submitted information pertains to a probationer who is under the supervision of the department. Based on your representation and our review, we conclude this information is maintained by the department as an agent of the judiciary, consists of records of the judiciary, and is not subject to release under the Act. Accordingly, the submitted information need not be released in response to this request.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 685849

Enc. Submitted documents

c: Requestor
(w/o enclosures)