



**THE ATTORNEY GENERAL
OF TEXAS**

November 20, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Thomas Lowe
Clerk
Court of Criminal Appeals
State of Texas
P. O. Box 12308
Capitol Station
Austin, Texas 78711

Open Records Decision No. 535

Re: Whether a copy of the contract between the Court of Criminal Appeals and West Publishing Company for Westlaw services is a public record under the Texas Open Records Act, article 6252-17a, V.T.C.S. (RQ-1801)

Dear Mr. Lowe:

The Court of Criminal Appeals received an open records request for a copy of the contract between West Publishing Company and the appellate courts for the Westlaw computer assisted legal research service. The agreement grants the Texas Court of Criminal Appeals and the fourteen appellate courts access to the Westlaw computerized legal research service in exchange for the courts' electronically transmitting opinions, orders, decisions, and similar material in machine-readable form to West Publishing Company. The former presiding judge of the Court of Criminal Appeals executed the contract.

Under the Open Records Act, all information held by a governmental body is open unless the information falls within one of the act's specific exceptions to disclosure. Attorney General Opinion JM-672 (1987). If this request for information had been received by an entity that clearly constituted a governmental body under the act, it would be governed by Open Records Decision No. 514 (1988) (contract between Secretary of State and West Publishing Company for publication of Texas Administrative Code). The issue to be resolved is whether the court constitutes a governmental body under the Open Records Act.¹

1. The Texas Attorney General has authority under section 7 of article 6252-17a, V.T.C.S., to determine whether an entity constitutes a governmental body within the
(Footnote Continued)

Section 2(1) of the Open Records Act defines the entities that constitute governmental bodies under the act. Section 2(1)(A) provides that "governmental body" means

any board, commission, department, committee, institution, agency, or office within the executive or legislative branch of the state government, or which is created by either the executive or legislative branch of the state government, and which is under the direction of one or more elected or appointed members. (Emphasis added).

Subsection 2(1)(A) does not include the judicial branch. Subsection 2(1)(G) provides expressly that "the Judiciary is not included within this definition." The Court of Criminal Appeals is part of the judiciary within the meaning of subsection 2(1)(G). See Tex. Const. art. V, § 1; see also id. §§ 4, 5.

In Benavides v. Lee, 665 S.W.2d 151 (Tex. App. - San Antonio 1983, no writ), the court explained the purpose of the judiciary exception as follows:

The judiciary exception, § 2(1)(G), is important to safeguard judicial proceedings and maintain the independence of the judicial branch of government, preserving statutory and case law already governing access to judicial records. But it must not be extended to every governmental entity having any connection with the judiciary.

Id. at 152; see Open Records Decision Nos. 527 (1989) (Court Reporters Certification Board subject to act); 25 (1974) (records of justice of the peace are not subject to Open Records Act but are subject to common-law and statutory rights of inspection). In Benavides v. Lee, supra, the court held that the Webb County Juvenile Board is not an extension of the "judiciary" simply because the members of the board were judges. The Benavides v. Lee case is not on point with regard to your request because it addressed the

(Footnote Continued)

meaning of the Open Records Act, subject to review by the courts. Kneeland v. Nat'l Collegiate Athletic Ass'n, 650 F. Supp. 1064, 1072-73 (W.D. Tex. 1986), rev'd on other grounds, 850 F.2d 224 (5th Cir. 1988), cert. denied, 109 S.Ct. 868 (1989).

applicability of the act to a separate administrative body, a juvenile probation board, not to the court itself.

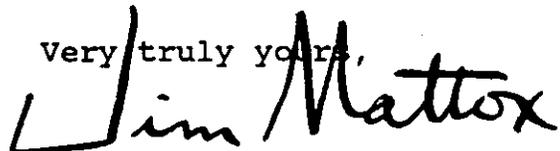
In Mustard v. State, 711 S.W.2d 71 (Tex. App. - Dallas 1986), cert. denied, 108 S.Ct. 265 (1987), the court addressed the applicability of section 2(1)(G) in the context of a criminal defendant's defense. In Mustard v. State, a defendant, convicted of bribery for buying access codes to Dallas Municipal Court computers to "fix" traffic tickets, defended himself by arguing that the codes were public records under the Open Records Act. The court rejected the argument because the access codes were "for the Dallas Municipal Court computer system, a part of the state judiciary system" and therefore exempt from the Open Records Act under section 2(1)(G). Id. at 77. Based on Mustard v. State, we conclude that the contract here is excluded from the Open Records Act by section 2(1)(G).

The requestor would be entitled to the information only if laws other than the Open Records Act granted a right of access. See, e.g., Palacios v. Corbett, 172 S.W. 777 (Tex. Civ. App. - San Antonio 1915, writ ref'd); see also Jenkins v. State, 75 S.W. 312 (Tex. Crim. App. 1903); Benavides v. Lee, supra, at 152 (Open Records Act exemption for judiciary intended to preserve existing rights of access to judicial records). Determining whether a member of the public has a right of access granted by laws other than the Open Records Act to specific information, however, is beyond the scope of an open records decision.

S U M M A R Y

Section 2(1)(G) of the Texas Open Records Act, article 6252-17a, V.T.C.S., excludes the "judiciary" from the act's definition of "governmental body." Consequently, the Texas Court of Criminal Appeals is not subject to the Open Records Act. The contract between the court and West Publishing Company for Westlaw services is not available to the public under the Open Records Act.

Very truly yours,



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