



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

October 23, 1990

Honorable Fred G. Rodriguez
Bexar County Criminal
District Attorney
Bexar County Courthouse
San Antonio, Texas 78205

Open Records Decision No. 572

Re: Whether information about
the release of arrestees on
personal bond is excepted from
disclosure under the Open
Records Act, article 6252-17a,
V.T.C.S. (RQ-1971)

Dear Mr. Rodriguez:

You advise that the director of the Bexar County Personal Bond Program has received a request pursuant to the Texas Open Records Act, article 6252-17a, V.T.C.S., for a "list of all Personal Bail forfeitures outstanding uncollected since 1981 showing date forfeited, case number, name of defendant, court and charge," and for a "list of all Personal Bonds outstanding at this time showing date made, charge, court, name of defendant, and the name of the Judge who signed the bond."

You advise that the requested information is not compiled into lists as specified by the requestor, and that the request is, therefore, a request for new information. The requestor, in response to your request for an attorney general opinion with respect to this matter, responds to your assertion that you do not keep the requested lists by requesting access to what information the Personal Bond Program has.

The Open Records Act does not require the creation or preparation of new information. Open Records Decision Nos. 458 (1987); 342 (1982). Accordingly, the Bexar County Personal Bond Program need not compile the requested information into lists as originally specified by the requestor. The question remains whether the Open Records Act affords the requestor access to information in the possession of the Bexar County Personal Bond Program from which the requested information may be redacted.

In lieu of the requested compilations of information, you submit for our inspection pursuant to section 7 of the Open Records Act, as responsive to the request for

information, representative copies of (1) the Personal Bond Program's reports prepared for the use of judges, (2) what appear to be file cards that include various information regarding the accused, and (3) copies of executed personal bond agreements. You assert that the information submitted for our inspection consists of judicial records and is therefore not covered by the Open Records Act.

The Bexar County Personal Bond Program was created by the commissioners court pursuant to article 17.42 of the Code of Criminal Procedure. A personal bond office may be created by a county or by a judicial district having jurisdiction in more than one county. The purpose of a personal bond office is "to gather and review information about an accused that may have a bearing on whether he will comply with the conditions of a personal bond and report its findings to the court before which the case is pending." Id. § 1. Personal bond offices created pursuant to article 17.42 are funded by the county or counties served by the office. Id. §§ 2, 3, 4.

The Open Records Act applies to all information collected, assembled, or maintained by or for a "governmental body" as defined in section 2 of the act. Section 2 provides, in part:

In this Act:

(1) 'Governmental body' means:

. . . .

(F) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean funds of the State of Texas or any governmental subdivision thereof;

(G) the Judiciary is not included within this definition.

We think the Bexar County Personal Bond Office is clearly a "governmental body" unless it falls within the judiciary exception found in section 2(1)(G).

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. The court in Benavides found the Webb County Juvenile Board not to be a part of the judiciary within the meaning of section 2(1)(G).¹ In so finding, the court reasoned that an analysis of the judiciary exception should focus on the governmental body itself and the kind of information requested. Id. at 151.

As noted above, a personal bond office provides a district judge with information to determine the eligibility of accused persons for release on recognizance. This is the only relationship that exists between the district judges and the personal bond office when the county commissioners have established the office. Attorney General Opinion JM-410 (1985). The Bexar County Personal Bond Program is not a court. It cannot adjudicate any matters concerning personal bonds. It is not directly controlled or supervised by a court. Its director is employed by the commissioners court. Accordingly, we find that the Bexar County Personal Bond Program is a governmental body, subject to the Open Records Act, and not within the judicial exception found in section 2(1)(G).

However, this does not end our inquiry. As noted in Benavides, we must also look to the nature of the information being requested. The reports compiled by a personal bond office pursuant to article 17.42, section 1, are created and maintained solely for judicial purposes. Each report is prepared in reference to a specific cause before a court, and is reviewed by the judge of the court before which the cause is pending for the purpose of informing the judge in the exercise of his judicial function. In this regard, the reports prepared by a personal bond office are similar to pleadings, briefs, and other documents prepared to invoke or inform the exercise of judicial authority. Accordingly, we find that in conducting investigations and preparing reports pursuant to article 17.42, section 1,

1. The Webb County Juvenile Board was created by article 5139JJJ, V.T.C.S., now Human Resources Code section 152.2461.

V.T.C.S., the Personal Bond Program functions as an arm of the court. The information gathered and the reports prepared pursuant to article 17.42 are, therefore, records of the judiciary and not subject to the Open Records Act. Cf. United States v. Guitierrez, 556 F.2d 1217 (5th Cir. 1977), United States v. Greathouse, 188 F.Supp. 765 (M.D. Ala., N.D. 1960) (a pre-sentence report is not a public record); Attorney General Opinion JM-446 (1986) (judicial records held by non-judicial governmental body are not subject to the Open Records Act).

The personal bond agreements themselves are agreements between the accused and the court. Accordingly, we find them to be excepted from the Open Records Act as records of the judiciary.

While access to other information maintained by the Bexar County Personal Bond Program may be governed by the Open Records Act, we find that the representative information submitted for our inspection constitute records of the judiciary, and are excepted from the coverage of the Open Records Act. We note that this does not preclude public access to this information. We find only that access to this information is not governed by the Open Records Act, but is within the discretion of the courts.

S U M M A R Y

The Bexar County Personal Bond Program is a governmental body and not within the judicial exception found in section 2(1)(G) of the Open Records Act. However, in conducting investigations and preparing reports pursuant to article 17.42, section 1, V.T.C.S., the Personal Bond Program functions as an arm of the court. The information gathered and the reports prepared pursuant to article 17.42 are, therefore, records of the judiciary and not subject to the Open Records Act. Access to this information is within the discretion of the courts.

Very truly yours,



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