



Office of the Attorney General
State of Texas

January 19, 1994

DAN MORALES
ATTORNEY GENERAL

Mr. Larance Coleman
Director
Harris County Community Supervision
and Corrections Department
49 San Jacinto
Houston, Texas 77002

OR94-007

Dear Mr. Coleman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 20549.

The Harris County Community Supervision and Corrections Department (the "department") has received a request for documents relating to "a contract for the site acquisition, construction design and construction of two (2) 500 bed residential facilities for criminal offenders under court ordered supervision (the 'Facilities')." Specifically, the requestor seeks:

1. All agreements related to the acquisition or construction of the Facilities, as well as the acquisition of the site for the Facilities, including but not limited to, agreements related to the payment of money in any way related to the acquisition or construction of the Facilities or the acquisition of the site therefor or related to any professional services procured for the acquisition or construction of the Facilities; and
2. All documents related to the solicitation of bids or the award of a contract for the acquisition, construction design, or construction of the Facilities.

The department contends that it is part of the judiciary and is therefore exempt from the requirements of the Open Records Act.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

Section 552.021 of the Open Records Act provides that

(a) Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled, or maintained:

(1) by a governmental body.

Section 552.003(b) provides that for purposes of the Open Records Act the term "governmental body" does not include the judiciary."

The purposes and limits of the judiciary exception were construed in *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ). The court held that the Webb County Juvenile Board was not part of the judiciary for purposes of the Open Records Act, despite the fact that the board consisted of members of the judiciary and the county judge. The court stated that:

The Board is not a court. A separate entity, the juvenile court, not the Board, exists to adjudicate matters concerning juveniles. Nor is the Board directly controlled or supervised by a court.

Moreover, simply because the Legislature chose judges as Board members, art. 5139JJJ, § 1, [V.T.C.S.,] does not in itself indicate they perform on the Board as members of the judiciary. . . . The Board's role as described in art. 5139JJJ is exclusively administrative.

Benavides, 665 S.W.2d at 151-52; *see also* Open Records Decision No. 572 (1990) at 3 ("analysis of the judiciary exception should focus on the governmental body itself and the kind of information requested") (citing *Benavides*, 665 S.W.2d at 151).

The *Benavides* case is controlling. You state that "the facilities, at all stages of planning, contracting, construction, programming and implementation have been, are, and will be under the supervision of the combined judiciary of Harris County, through the oversight committee." It is not dispositive that the oversight committee is composed of judges. The judges connected with the department do not act in a judicial capacity nor are the requested records prepared for the use of a court in its judicial capacity. The records consist of lease documents, purchase orders and other documents of an administrative nature. Moreover, as in the *Benavides* case, the statute governing community supervision and corrections departments suggests that members of the judiciary who are involved in community supervision and corrections departments perform administrative as opposed to judicial functions. *See Benavides*, 665 S.W.2d at 152 ("classification of the Board as judicial or not depends on the functions of the Board, not on members' service elsewhere in government"). Accordingly, the department is not part of the judiciary for purposes of the Open Records Act.

In a subsequent letter to this office, the department claims that the requested information is excepted from required public disclosure under section 552.103 of the Government Code. Section 552.103(a) excepts information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The department raised section 552.103 after the expiration of the ten-day deadline for making requests to this office. Gov't Code §§ 552.301, .302. Where requests are not made within ten days, the information is presumed to be public. Open Records Decision No. 319 (1982). A governmental body must show a compelling reason to overcome this presumption, *i.e.*, that the information is confidential under some other source of law or that third-party privacy interests are at stake. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The governmental interests protected by section 552.103(a) are generally not compelling enough to overcome this heightened presumption of openness. Open Records Decision No. 473 (1987) at 3. Accordingly, the requested documents must be released to the requestor.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LBC/rho

²We note that even if the department's section 552.103(a) claim had been timely raised, it would not apply here. You state that the opposing party to the litigation involving the department has "obtained all of the documents by litigation discovery." Once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). Because the opposing party in the litigation has seen or had access to the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a).

Ref: ID# 20549

Enclosures: Open Records Decision No. 572
Returned documents

cc: Mr. F.J. Coleman Jr.
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(w/o enclosures)