



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 28, 1994

Mr. Rogelio J. Perez  
Harris County Community Supervision and  
Corrections Department  
Courthouse Annex 21  
49 San Jacinto Street  
Houston, Texas 77002

OR94-112

Dear Mr. Perez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 22950.

The Harris County Community Supervision and Corrections Department (the "department") received an open records request for a listing of its employees' names, home and work telephone numbers, last known home addresses, positions and salaries. The department provided all the information relating to its employees' work information, but claims that their home addresses and telephone numbers are protected from disclosure under sections 552.117 and 552.024 of the Government Code (formerly sections 3(a)(17) and 3A, V.T.C.S. article 6252-17a). Alternatively, the department also claims that it is excepted from the act by section 552.003(b) (former section 2(1)(H), V.T.C.S. article 6252-17a).

Section 552.021 of the act provides in pertinent part 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:

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<sup>1</sup>The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46.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.

(1) by a governmental body.

Section 552.003(b) provides that for purposes of the act, the term "'governmental body' does not include the judiciary." The department contends that under section 552.003(b), it is part of the judiciary and is therefore exempt from the requirements of the act.

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 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.

The *Benavides* case is controlling. The department claims that "[t]he combined judiciary of Harris County establishes, employs and manages" the department under the Code of Criminal Procedure article 42.131, section 2(a) and thus the department should be considered part of the judiciary. The fact that the department is managed by the judiciary of the county is not dispositive. 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 are home addresses and telephone numbers of department employees. 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 act.

Section 552.117(1)(A) excepts employees' home telephone numbers and addresses provided that the employees have elected to keep them confidential pursuant to section 552.024. If a particular employee has chosen not to make public this home information, then it must not be disclosed. You indicate that "approximately 806 employees have elected not to disclose this information." Thus, you must withhold the

requested information of these employees who elected to keep their home addresses and telephone numbers confidential.<sup>2</sup>

As to the other remaining employees who did not make such an election for confidentiality under section 552.024, we next address the applicability of section 552.117, subsections (1)(B) and (2). Section 552.117 provides in pertinent part that information is excepted from disclosure under the act if it is:

(1) the home address or home telephone number of:

(A) a current or former official or employee of a governmental body, except as otherwise provided by section 552.024; or

(B) a peace officer as defined by Article 2.12, Code of Criminal Procedure, . . . . or

(2) the home address, home telephone number, or social security number of an employee of the Texas Department of Criminal Justice, or the home or employment address or telephone number, name, or social security number of a family member of the employee.

The department claims that all of its employees are "peace officers" under article 2.12 of the Code of Criminal Procedure as described in section 552.117(1)(B). However, the definition of "peace officer" under article 2.12 does not specifically list department employees, and the department admits that "[n]o employee of the department is employed as a peace officer." Thus, the term is not applicable to these employees. See Code Crim. Proc. art. 2.12; Open Records Decision No. 532 (1989).

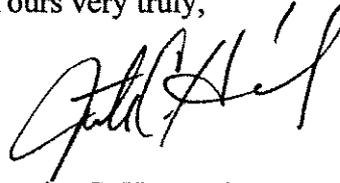
The department also contends that it "is part of the Texas Department of Criminal Justice" ("TDCJ"), and thus section 552.117(2) applies to the department's employees. However, article 42.131, section 6(a) of the Code of Criminal Procedure provides that "department employees are *not* state employees" (emphasis added), and are, in fact, to be treated as county employees. *Id.* They are considered state employees only for purposes of the Texas Tort Claims Act and as provided under the Code of Criminal Procedure article 42.131, section 6(c). The Code clearly indicates that the legislature did not intend department employees to be considered TDCJ employees. Moreover, we note that the act is to be liberally construed in favor of granting access to requested information. Gov't Code § 552.001(b). We therefore conclude that the department's employees are not TDCJ employees for purposes of section 552.117(2). Consequently, their home information is not protected from disclosure by section 552.117(2).

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<sup>2</sup>We note that for section 552.117(1)(A) to except from disclosure the home address and telephone number of a particular employee, that employee must have elected to maintain the confidentiality of this information on or before the department received the request for information dated October 18, 1993. See Open Records Decision No. 530 (1989); Gov't Code § 552.024.

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 our office.

Yours very truly,



Juanita C. Hernandez  
Special Assistant Attorney General  
Open Government Section

JCH/rho

Ref.: ID# 22950

Enclosure: Submitted document

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(w/o enclosure)