



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 25, 1994

Mr. John B. Wear
Assistant Criminal District Attorney
Bexar County Justice Center
300 Dolorosa, Suite 5072
San Antonio, Texas 78205-3030

OR94-393

Dear Mr. Wear:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25585.

The Bexar County District Attorney's Office received an open records request for "the adult probation records maintained by your office arising out of the criminal cases 73-CR-1225, Texas v. Lesley Lee Gosch and 73-CR-2175, Texas v. Lesley Lee Gosch."¹ You contend that the requested records are not subject to required public disclosure because they are records of the judiciary exempted from the provisions of the Open Records Act.

Section 552.003 of the Government Code, which establishes the types of governmental bodies that are subject to the provisions of the Open Records Act, specifically provides:

¹You explained in a telephone conversation with one of our staff members that the Bexar County District Attorney does not maintain probation records and that your office obtained the records at issue directly from the Bexar County community supervision and corrections department (the "department"). You further advised at that time that you intend to return these records to the department once you receive them back from this office. Normally, the Open Records Act does not require a governmental body to obtain information not in its possession in response to an open records request. Open Records Decision No. 445 (1986) at 2. However, because we assume that you are requesting an open records decision on behalf of the department, *see, e.g.*, Open Records Decision No. 236 (1980), we will address your arguments regarding the required release of these records.

In this chapter, "governmental body" does not include the judiciary.

Gov't Code § 552.003(b). Accordingly, records of the judiciary are not subject to the Open Records Act. *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ) (certain records held by Webb County juvenile board not directly relating to judicial functions subject to act). This office therefore must determine whether the requested records, which are maintained by the Bexar County community supervision and corrections department (the "department"), are records of the judiciary.

In this regard, we note at the outset that the state courts are responsible for supervising probationers. Section 1 of article 42.12 of the Code of Criminal Procedure provides in pertinent part:

It is the purpose of this article to place *wholly* within the state courts the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of community supervision, *and the supervision of defendants placed on community supervision*, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. [Emphasis added.]

Article 42.131 of the Code of Criminal Procedure, which governs the establishment of "community supervision and correction departments," provides in pertinent part:

The district judge or district judges trying criminal cases in each judicial district in the state shall establish a community supervision and corrections department and employ district personnel as may be necessary to conduct presentence investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision, and staff community corrections facilities.

Code Crim. Proc. art. 42.131, § 2(a).

In Open Records Decision No. 236 (1980) at 2, this office held that because district court judges have the ultimate direction and control over the supervision and rehabilitation of probationers, probation officers who act according to the court's direction serve merely as the court's agent in carrying out their supervisory duties; consequently, the probation department maintains probationers' records solely on behalf of the court. *Compare with Benavides v. Lee*, 665 S.W.2d at 151 (Tex. App.--San Antonio 1983, no writ) (county juvenile board not "controlled or supervised" by court). The records therefore were those of the judiciary and not subject to the provisions of the Open Records Act.

Open Records Decision No. 236 governs your request. The requested probation records are records of the judiciary and therefore not subject to the Open Records Act.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 our office.

Yours very truly,



Kyemberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RWP/rho

Ref.: ID# 25585

Enclosures: Submitted documents

cc: Mr. Raoul Schonemann
Staff Attorney
Texas Resource Center
1206 San Antonio
Austin, Texas 78701
(w/o enclosures)

Ms. Amy C. Wright
George, Donaldson & Ford
1000 Norwood Tower
114 West 7th Street
Austin, Texas 78701
(w/o enclosures)

²The release of these records is within the discretion of the court, acting through its agent, the probation department. Open Records Decision No. 236 at 2-3.