



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1995

Mr. Richard Ybarra
Open Records Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR95-1139

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (the "act"). Your request was assigned ID# 36156.

The Office of the Attorney General (the "attorney general") received an open records request for certain records pertaining to the attorney general's representation of the Court of Criminal Appeals in a sexual harassment claim filed by a former employee of the court. You state that you have released to the requestor "a portion of the documents requested." You seek to withhold other records held by the attorney general pursuant to several of the act's exceptions to required public disclosure.¹ However, we conclude that none of the exceptions you raise apply to the requested information.

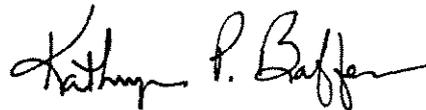
It is well established that records of the judiciary, of which the Court of Criminal Appeals is a part, are not subject to the act. See Gov't Code § 552.003(1)(B); Open Records Decision No. 535 (1989). Further, records gathered on behalf of the judiciary are not subject to the provisions of the act even where those records are in the actual possession of the court's agent. Open Records Decision No. 513 (1988). Because the attorney general was acting as the court's "agent" during the course of his representation, all records gathered or created by the attorney general while acting as legal counsel to the Court of Criminal Appeals are in the constructive possession of the court. See Open

¹We note that some of exceptions were not raised within the required ten days following the attorney general's receipt of the open records request. See Gov't Code § 552.301(a).

Records Decision No. 499 (1988). Accordingly, the Open Records Act neither authorizes nor prohibits the release of the requested records. The attorney general should consult with the court to determine whether it wishes to release the requested information to the public or whether common-law or the court's rules require the release of this information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/RWP/rho

Ref.: ID# 36156

Enclosures: Submitted documents

cc: Mr. Robert Elder, Jr.
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(w/o enclosures)