Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 9, 1996

Mr. David Motley
County Attorney
Kerr County
County Courthouse, Suite B-20
700 East Main Street
Kerrville, Texas 78028-5324

OR96-1414

Dear Mr. Motley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 100079.

You ask whether certain records that are allegedly in the custody of an architectural firm that was hired by Kerr County (the "county") are "public information" under section 552.002 of the Government Code. Specifically, you ask whether a "job diary, material tests, and 'material received' records" that were developed in connection with the design and construction of the county's law enforcement center are public information.

The physical location of information is not determinative of whether the information is subject to the disclosure requirements of the Texas Open Records Act. Open Records Decision Nos. 558 (1990) at 2, 462 (1987) at 7. Rather, section 552.002 provides that information is public information if it is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body *owns the information or has a right of access to it.*" (Emphasis added.)[1] Thus, the act clearly encompasses information that is maintained by a third party, if it otherwise meets the definition of "public information."

[1]In Open Records Decision Nos. 499 (1988) and 462 (1987), this office used three factors to determine whether information held by third parties was subject to the Open Records Act: (1) the information relates to the governmental body's official duties or business; (2) the third party acts as agent of the governmental body in collecting the information, and (3) the governmental body has or is entitled to access to the information. These factors were incorporated into the definition of "public information"

In the situation at hand, the information at issue has been collected, assembled, or maintained in connection with the transaction of official business, *i.e.* the building of the county's law enforcement center. Based on the information provided to this office, we also conclude that the county has a right of access to the information. The county has provided this office with a copy of the building contract between the architect and the county dated April 27, 1992.[2] Article 6.1 of the contract specifically provides that the county shall be permitted to retain copies, including reproducible copies, of the architect's drawings, specifications and other documents in connection with the county's use and occupancy of the project. The county therefore has a right of access to this information, and documents in the possession of the architect relating to the county's law enforcement center are "public information" subject to the disclosure requirements of chapter 552 of the Government Code.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 100061

(Footnote continued)

by the Texas Legislature in 1989. Open Records Decision No. 558 (1990); *see* Acts 1989, 71st Leg., ch. 1248, § 9 at 5023.

[2]This opinion is based on the assumption that the architectural firm was acting as the county's agent pursuant to the contract dated April 27, 1992, entered into between the county and the architectural firm. To the extent that there are factual issues concerning the validity or application of this contract, this office is unable to resolve questions of fact through the opinion process. Open Records Decision Nos. 554 (1990), 552 (1990). We note, however, that under Texas common-law, an architect is the agent of the owner. *Transamerica Ins. Co. v. Housing Auth. of Victoria*, 669 S.W.2d 818, 822 (Tex. App.--Corpus Christi 1984, writ ref'd n.r.e.). Additionally, an agent has the duty to disclose to the principal material facts relating to the transaction. *Allison v. Harrison*, 137 Tex. 582, 156 S.W.2d 137 (1941).