OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

January 26, 2000

Mr. Thomas F. Keever
Assistant District Attorney
Denton County
P.O. Box 2850
Denton, Texas 76202

OR2000-0249

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131546.

The County Judge of Denton County (the "county judge") received a request for all memos, letters, reports, directives, e-mail, telephone message slips, or other writings, pertaining to twenty-one listed subjects, that were either produced or received by the county judge or his staff during a specified time interval. You assert that the office of the county judge is not a governmental body, as defined by section 552.003(1)(A) of the Government Code, but instead is a judicial office that is excluded from the scope of section 552 of the Government Code (the "Public Information Act"). You further contend that the Public Information Act does not require a governmental body to provide access to information that is requested on such a broad, generalized basis. You inform this office that, if the county judge is subject to the Public Information Act and if the instant request for information is proper, all of the requested records are subject to public disclosure except for one document that you have submitted for our review. You claim that the submitted document is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered your arguments and have reviewed the information you submitted. We also have considered the brief that was submitted on behalf of the requestor.

You argue that the office of the county judge is not subject to the Public Information Act (1) because it is not a "governmental body," as defined by section 552.003(1)(A) of the Government Code, and (2) because it is a judicial office, and under the Act "'governmental body' . . . does not include the judiciary." Gov't Code § 552.003(1)(B). This office addressed substantially the same contention in Open Records Decision No. 204 (1978). There, a county judge who had received a request for records relating to his correspondence with constituents and expense reimbursements contended that he was a member of the judiciary and therefore was excluded from the scope of the former Open Records Act.[1] This

[1]V.T.C.S. art. 6252-17a

office noted that under the former Act, the definition of "governmental body" encompassed both "'the commissioners court of each county'" and "'the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds[.]'" ORD 204 at 1, *quoting* V.T.C.S. art. 6252-17a, § (2). We also acknowledged that, under the Act, "'the Judiciary [was] not included within [the definition of governmental body].'" *Id.* We pointed out, however, that "[t]he county judge is judge of the county court, and also is presiding officer of the commissioners court," ORD 204 at 1, and as such "'is not a judicial officer only.'" *Id.* at 2, *quoting Clark v. Finley*, 54 S.W. 343 (Tex. 1899). Based on these considerations, we concluded that "information held by the county judge is subject to the Open Records Act except to the extent it pertains to cases and proceedings before the county court." *Id.* Since the issuance of Open Records Decision No. 204, there has been no fundamental change in either the constitutional responsibilities of a county judge or the operative language of the Public Information Act.[2] *See* Tex. Const. Art. V, §§ 15,16, 17, 18; Gov't Code §§ 552.001, 552.003(1)(A)(ii), (x) and (B); *see also Benavides v. Lee*, 665 S.W.2d 151, 152 (Tex. App.--San Antonio 1983, no writ) ("The intent of the Open Records Act must not be circumvented by an unnecessarily broad reading of the judiciary exclusion").[3] Accordingly, we conclude that to the extent that the requestor seeks information that does not pertain to cases and proceedings before the constitutional county court, the office of the county judge is subject to the requirements of chapter 552 of the Government Code.

You also contend that the Public Information Act does not require a governmental body to provide access to information that is requested on such a broad, generalized basis. Citing section 552.222 of the Government Code, you contend that the requestor should be required to narrow the scope of his request to specify the type of correspondence sought or the specific subject matter of the requested correspondence. It is fundamental that a governmental body may not disregard a request for records, merely because a requestor does not specify the exact documents desired, and instead must make a good faith effort to relate a request to available information. *See* Open Records Decision Nos. 561 at 8-9 (1990), 87 (1975). Section 552.222(b) of the Government Code provides, however, that if a governmental body is unable to determine the nature of the records being sought, it may ask

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[2]The Seventy-third Legislature codified the Public Information Act as chapter 552 of the Government Code and repealed the former article 6252-17a of Vernon's Texas Civil Statutes. The codification of the former Open Records Act was a non-substantive revision. *See* Act of May 4, 1993, 73rd Leg., R.S., ch. 268, § 47, 1993 Tex. Gen. Laws 583, 986.

[3]For other instances in which this office has construed the judiciary exception to the Public Information Act and its predecessor statute, *see* Open Records Decision Nos. 646 (1996) (notwithstanding involvement of district judges in its administration, community supervision and corrections department is governmental body and not part of judiciary); 572 (1990) (Bexar County Personal Bond Office is governmental body and not within judiciary exception); 527 (1989) (Court Reporters Certification Board; same). In *Benavides v. Lee*, the Court of Appeals held the Webb County Juvenile Board to be subject to the Open Records Act, even though the board members included members of the judiciary and the county judge. *See Benavides*, 665 S.W.2d at 151-52.

the requestor to clarify the request so that the desired records may be identified. This office previously has held that a request "must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request." Open Records Decision Nos. 663 at 4 (1999), 23 at 1-2 (1974); *see also* Open Records Decision No. 304 (1982) (governmental body sought clarification as to particular documents sought when requestor asked for all documents relating to particular issue). Section 552.222(b) also provides that "[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed[.]" However, section 552.222(b) does not stand for the proposition that a request may be denied merely because it seeks a broad range of documents. Its purpose is to authorize a dialogue between the governmental body and the requestor regarding the scope of the records request.[4] ORD 663. If a requestor makes a vague or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available so that the requestor may narrow or clarify the request. *See id.* at 5. If the requestor chooses not to narrow a broad request, the governmental body must release all responsive information if no exception to disclosure applies. The administrative inconvenience of providing public records is not a ground for refusal to comply with the Public Information Act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The instant request for information specifies the physical or other form of the information sought, the subject matter of the information, and the time frame for the creation or receipt of the requested information. The requestor states that, with certain limitations, he wants access to each document produced or received by the county judge and his office regarding certain matters during the time interval specified in the request.[5] The request, while encompassing numerous facets of county business, is sufficiently clear and understandable to inform the county judge of the records being requested, as is evidenced by your ability to identify records that are responsive to it. We believe that these considerations are decisive. Recognizing that a request for public information should not create undue hardships for governmental bodies, the Public Information Act contains provisions enacted to permit them to function economically and efficiently when complying with requests for information.[6] Nevertheless, these provisions are subordinate to the fundamental premise that the public has a presumptive right of access to complete information about the affairs of government. *See* Gov't Code § 552.001(a). Given the mandate found in section 552.001 that the provisions of the Public Information Act be liberally construed to effect this end, we conclude that the

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[4]Section 552.222(b) also limits the nature of the inquiries by the governmental body to those regarding the requested documents themselves. This section prohibits the governmental body from inquiring into the purpose for which the requestor seeks the records.

[5]The requestor has excluded from the scope of his request "mass mailings or pre-printed materials intended for wide distribution . . . [and] personal e-mails between co-workers not concerning the transaction of official Denton County business."

[6]*See, e.g.*, Gov't Code §§ 552.231, 552.232, 552.261, 552.2615.

instant request is valid.[7] Consequently, the county judge must release all documents for which you have raised no exception to disclosure.

In light of our resolution of your threshold arguments, we consider your claims under sections 552.101 and 552.107 of the Government Code. Section 552.101 protects information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision. This office has concluded that section 552.107, and not section 552.101, governs a claim that requested information represents a protected attorney-client communication. *See* Open Records Decision Nos. 575 at 2 (1990) (construing predecessor statute), 574 at 2 (1990) (same). Section 552.107 provides in relevant part that information is excepted from required public disclosure if

> it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107(1). Although the scope of section 552.107(1) would appear to be co-extensive with that of rule 1.05 of the Texas Disciplinary Rules of Professional Conduct, which prohibits an attorney from divulging "confidential information," this office has concluded that such an interpretation of rule 1.05 would be in potential conflict with the purposes of chapter 552 of the Government Code. *See* Open Records Decision No. 574 at 4-5 (1990) (construing predecessor statute). Accordingly, this office has determined that section 552.107(1) protects only what rule 1.05 describes as "privileged" information, *i.e.*, information that represents confidential communications between attorney and client. *Id.* at 5. "Unprivileged" information, as defined by rule 1.05, is not excepted from disclosure under section 552.107(1). *Id.* Thus, section 552.107(1) excepts from disclosure only factual information or requests for legal advice communicated by the client to the attorney and legal advice or opinion rendered by the attorney to the client or to an associated attorney in the course of rendering legal services to the client. *Id.* at 7-8. You state that the document that you submitted for review is an e-mail in which you provided legal advice to the county judge and the county director of administration. Based on your representation and our review of the submitted document, we conclude that it is excepted from disclosure under section 552.107(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

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[7]Any questions you may have about copy charges generally should be directed to the General Services Commission. Gov't Code §§ 552.261, .262.

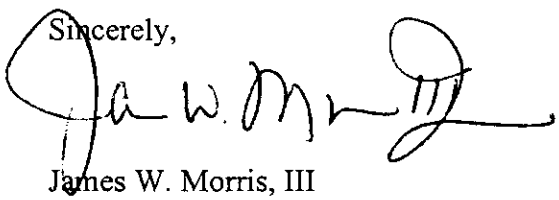
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



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JWM/ch

Ref: ID# 131546

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