



February 2, 2000

Mr. Thomas F. Keever
Assistant District Attorney
Denton County District Attorney's Office
P.O. Box 2850
Denton, Texas 76201

OR2000-0359

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#131773.

The Honorable Kirk Wilson of the Denton County Commissioners Court, whom you represent, received a request for 21 enumerated items on November 15, 1999. You make three arguments against required public disclosure of the requested information. First, you argue that the office of the Denton County Judge is a judicial office that is not a governmental body subject to the Act. Second, you argue that the request is impermissibly "overboard and generalized." Finally, you argue that one document, an e-mail message, is excepted from disclosure based on sections 552.107(1) and 552.111 of the Government Code. You have submitted the e-mail message that you addressed to Judge Wilson and Peter Wrench, Director of Administration.

We begin with the threshold question of whether the records of a county judge are subject to the Act. 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 had received a request for records relating to his correspondence with constituents and to reimbursement of his expenses by the county. He contended that he was a member of the judiciary and therefore was excluded from the scope of the former Open Records Act, article 6252-17a of Vernon's Texas Civil Statutes. This 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)(1)(B), (F). We also acknowledged that, under the Act, “the Judiciary [was] not included within [the definition of governmental body].” *Id.*, *quoting* V.T.C.S. art. 6252-17a, § (2)(1)(G). We pointed out, however, that “[t]he county judge is judge of the county court, and also is presiding officer of the commissioners court,” *id.*, 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:

The commissioners court is expressly included in the definition of governmental body . . . and the county judge is a part of the commissioners court. . . . Section 2(1)(F) makes every part of an organization, institution or agency supported by public funds a governmental body and subject to the [Open Records] Act. Accordingly, we believe each component of the commissioners court, *including the county judge*, is subject to the Act.

We do not believe that there is an irreconcilable conflict within the definition of ‘governmental body’ as to its application to the county judge as part of the commissioners court, and its exclusion of the judiciary from the Act. *We believe 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.* This construction of the Act is consistent with both the requirement that it be liberally construed in favor of granting any request for information and the exclusion of the judiciary from the Act.

ORD 204 at 2 (emphasis added). Since the issuance of Open Records Decision No. 204, there has been no essential change in either the constitutional responsibilities of a county judge or the operative language of the Public Information Act.¹ *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”).² Accordingly, we conclude that, to the extent that the requestor seeks

¹ The Public Information Act was codified as chapter 552 of the Government Code, and the former article 6252-17a of Vernon’s Texas Civil Statutes was repealed, by the Seventy-third Legislature. 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.

² 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

information that does not pertain to cases and proceedings before the constitutional county court, the office of the County Judge of Denton County is subject to the requirements of chapter 552 of the Government Code.

We turn to your argument that the request is improper in its breadth and generalized nature. Citing section 552.222 of the Government Code as authority, 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 well-established that a governmental body may not disregard a request for records made pursuant to the Public Information Act merely because a requestor does not specify the exact documents desired. A governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 at 8-9 (1990), 87 (1975). Section 552.222(b) of the Government Code, however, provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified. ORD 663. When 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. The requests, while encompassing numerous facets of county business, are sufficiently clear and understandable to inform the county judge of the records being requested, as is evidenced by your ability to identify records responsive to each of the individual requests.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request . . . a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not comply with section 552.301(e) because you did not submit a copy of the specific information or a representative sample until December 15, 1999.

Under section 552.302, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a

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.

.. nature of the inquires 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.

governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make a compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). However, the fact that information may be covered by the attorney client privilege, is not a compelling reason to withhold the responsive information. *See* Open Records Decision No. 630 (1994). Therefore you must release the e-mail to the requestor

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.

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,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguía". The signature is fluid and cursive, with a large initial "R" and "M".

Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMMjc

Ref: ID# 133173

Encl: Submitted documents

cc: Mr. Charles Siderius
Denton Record-Chronicle
P.O. Box 369
Denton, Texas 76201
(w/o enclosures)