Office of the Attorney General • State of Texas
John Cornyn

February 11, 2000

Mr. Thomas F. Keever
Assistant District Attorney
County of Denton
1450 East McKinney, Suite 3100
Denton, Texas 76202

OR2000-0502

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Texas Government Code. Your request was assigned ID#132401.

The Honorable Kirk Wilson, County Judge of Denton County, (the "county judge") received a request for all information received or generated by his office on a specific date. You have submitted as responsive to the request a communication, including attachments, from Denton County's counsel to a state court regarding pending litigation. You claim that the submitted documents, which you have labeled Exhibit C, are excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Initially, 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, and instead is a judicial office that is excluded from the scope of section 552 of the Government Code (the "Public Information Act"). You argue that the office of the county judge is not subject to the Public Information Act (the "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 noted, 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.

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). 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 of Denton County is subject to the requirements of chapter 552 of the Government Code.

You also contend that the Act does not require a governmental body to provide access to information requested on such a broad, generalized basis. Rather, 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 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.

We have reviewed the open records request submitted to the county judge. The request specifies the physical or other form of the information, 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 each request.

The Act provides a presumptive right of access to *complete* information about the affairs of government -- in this instance, the county judge's office and employees. The requestor seeks to obtain this information on a daily basis through an open records request for all correspondence received or generated by the county judge. Consequently, the county judge must release all documents for which you have raised no exception to disclosure.

We will now address your arguments against disclosure for the submitted documents. Exhibit C consists of a communication between counsel and the court in a lawsuit involving Denton County as a defendant. Attached to that communication is a proposed ruling for the judge's signature. Copies of the letter and proposed ruling were provided to all parties, counsel, as well as to the county judge. You assert that the documents are confidential by law and excepted from disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. We are aware of no authority - constitutional, statutory, or from a judicial decision - affording the submitted documents confidentiality, and you have presented no authority for that proposition. Consequently, you may not withhold Exhibit C under section 552.101.

You also assert that Exhibit C is excepted from disclosure under section 552.103. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. As the governmental body, you have the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. To show that section 552.103 is applicable, you must demonstrate that: 1) litigation is pending or reasonably anticipated, and 2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Also, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

There is no doubt the county was involved in a lawsuit and that the submitted documents were related to that lawsuit. However, the letter, by its own proof, was submitted to all

parties involved, including opposing counsel. Moreover, attached to the letter is a final order, signed November 2, 1999, dismissing the lawsuit with prejudice.[1] Accordingly, Exhibit C may not be withheld under section 552.103.

For the reasons stated above, the county judge must release the documents submitted as Exhibit C. Furthermore, you state that all other documents for the time period subject to the request are public information "which would, in fact, be disclosed to the requestor if an appropriate request for specific information or documents had been made." Based on our analysis here, we conclude that an appropriate request has been made, and that the county judge must disclose all documents subject to this request.

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 Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

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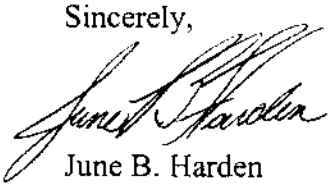
[1]For a discussion of the finality of judgments, see *Inglish v. Union State Bank*, 945 S.W.2d 810 (Tex. 1997).

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/CHS/ljp

Ref: ID# 132401

Encl. Submitted documents

cc: Mr. Charles Siderius
Staff Writer
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(w/o enclosures)