OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

February 18, 2000

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

OR2000-0607

Dear Mr. Keever:

You ask on behalf of Denton County Judge Kirk Wilson (the "county judge") whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133482.

The county judge received a request for all memoranda, letters, reports, directives, e-mail, telephone message slips, or other writings either produced or received by the county judge or his staff for the date of January 5, 2000 with regard to twenty-one listed subject areas. In this instance, the requestor has submitted the same open records request to the county judge on a daily basis. *But see* Attorney General Opinion JM-48 at 2 (1983) (governmental body not required to comply with standing request for information to be collected or prepared in future); Open Records Decision Nos. 452 at 3 (1986) (open records request applies only to information in existence at time request is received), 362 at 2 (1983) (governmental body not required to supply information not in its possession). You have submitted no documents you wish to withhold because the "documents for January 5, 2000 would be subject to public disclosure if an appropriate public information request had been made." However, you raise several questions and argue that the county judge need not comply with the request.

You first 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 chapter 552 of the Public Information Act (the "Act"). You argue that the office of the county judge is not subject to the Act (1) because it is not a "governmental body," as defined by section 552.003(1)(A), 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 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 [Public Information] 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 fundamental 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

[1]The 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.

judiciary exclusion.").[2] 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 a governmental body 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 Nos. 561 at 8-9 (1990), 87 (1975). Section 552.222(b), 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.

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. The purpose of this section is to authorize a dialogue between the governmental body and the requestor regarding the scope of the records request.[3] Open Records Decision No. 663 (1999). 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 of the requested information. The requestor states that,

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[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 governmental body and not part of judiciary), 572 (1990) (Bexar County Personal Bond Office is governmental body and not within judiciary exception), 527 (1989) (same for Court Reporters Certification Board). In *Benavides v. Lee*, the Court of Appeals held the Webb County Juvenile Board to be subject to the Act, even though the board members included members of the judiciary and the county judge. *See Benavides*, 665 S.W.2d at 151-52.

[3]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.

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.[4] 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 responsive to the request.

In light of our resolution of your threshold arguments, we conclude that you must release the requested information because you do not wish to withhold the information under any exceptions of the Act.

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).

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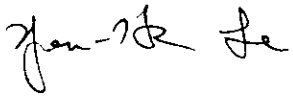
[4]The requestor has excluded from the scope of his request "mass mailings or pre-printed materials intended for wide distribution . . . [and] personal e-mails between co-workers not concerning the transaction of official Denton County business."

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).

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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