



March 3, 2000

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

OR2000-0871

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# 132702.

The office of the Denton County Judge (the "county judge") received a request, on December 14, 1999, for information received or generated daily by the Denton County Commissioners' Court, including twenty-one enumerated items. You claim that the county judge is not a governmental body under section 552.003(1) but rather a judicial officer who is not subject to the act under section 552.0035. You also assert that the request is overbroad and fails to identify specific information as required by the Public Information Act. You also claim that one of the requested documents is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. You assert that the remaining requested information is subject to public disclosure if this office determines that the requestor made an appropriate public information request. We have considered the exceptions you claim and reviewed the submitted information.

You first 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). In Open Records Decision No. 204 (1978), this office noted that, under the former Act, the definition of "governmental body" encompassed both "the commissioners court of each county," of which the county judge is a member, 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 that each component of the commissioners’ court, including the county judge, is a governmental body subject to the Act. *Id.* Further, we found no conflict between the application of the Act to the county judge and the judiciary’s exclusion from the Act because records pertaining to cases and proceedings before the county court are excluded from the Act based on the judiciary exclusion. *Id.* 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 Denton County Judge 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. You assert, under section 552.222 of the Government Code, 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. Section 552.222(b) 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. 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 requests submitted to the county judge. Each request specifies the physical 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.<sup>1</sup> 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

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<sup>1</sup>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.”

individual requests. Thus, we have determined that the requestor made an appropriate public information request.

You have submitted one document that you believe is responsive to the December 14, 1999 request and excepted from disclosure. You assert that the document is excepted from disclosure under section 552.103. Section 552.103(a), amended by the Seventy-sixth Legislature, reads as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing 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 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Further, litigation must be pending or reasonably anticipated on the date the requestor applies to the public information officer for access. Gov't Code § 552.103(c). Having reviewed the document, we conclude that litigation is pending and that the document relates to that litigation. Therefore, you may withhold the requested information under section 552.103(a).

We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no section 552.103(a) interest in withholding that information from the requestor. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).<sup>2</sup>

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

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<sup>2</sup>Having found the information excepted from disclosure under section 552.103, we need not address the applicability of sections 552.101 and 552.107.

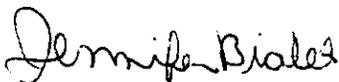
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). 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,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/ch

Ref: ID# 132702

Encl. Submitted documents

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