



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1995

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR95-744

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 32796.

The County of Travis (the "county") has received a request for certain information that the requestor believes is in the possession of the Travis County Pretrial Services Office (the "office"). The county will make some of the requested information available to the requestor through the release of the office's guidelines and budget request. In addition, you inform us that the office does not possess information responsive to items five, seven, and eight of the request. The Open Records Act does not require a governmental body to make available *nonexistent information*, Open Records Decision No. 362 (1983) at 3, nor does it require a governmental body to prepare new information in response to a request, Open Records Decision No. 605 (1992) at 2.

You question whether the county must release the remainder of the requested information, however; specifically, you question the availability to the requestor of the following:

3. The number of people applying for personal bond . . . since October 1994 to date;

....

6. The number of applicants by offense and the outcome of their application. . . .

You state that the office has documents from which the requestor may obtain the statistical data requested in items three and six. Nevertheless, you believe the documents constitute records of the judiciary and therefore are not subject to release under the Open Records Act. In the alternative, you believe the county must withhold the requested information pursuant to section 552.101 of the Government Code. Because we conclude the documents responsive to items three and six constitute records of the judiciary, we do not consider whether the information is confidential under section 552.101.

The Open Records Act expressly does not apply to the judiciary. *See* Gov't Code § 552.003(b). In Open Records Decision No. 572 (1990), this office considered whether certain information in the possession of the Bexar County Personal Bond Program constituted records of the judiciary. The information was comprised of the Personal Bond Program's reports prepared for the use of judges, file cards containing various information about the accused, and copies of executed personal bond agreements. Open Records Decision No. 572 (1990) at 2.

The decision stated that the commissioners court of Bexar County created the Personal Bond Program pursuant to article 17.42 of the Code of Criminal Procedure. *Id.* The purpose of the Personal Bond Program, as articulated in the statute, is "to gather and review information about an accused that may have a bearing on whether he will comply with the conditions of a personal bond and report its findings to the court before which the case is pending." *Id.* (quoting Code Crim. Proc. art. 17.42, § 1). Thus, the Personal Bond Program creates and maintains its reports solely for judicial purposes. *Id.* at 3.

"Accordingly," the decision concluded, "in conducting investigations and preparing reports pursuant to article 17.42, section 1, . . . , the Personal Bond Program functions as an arm of the court. The information gathered and the reports prepared pursuant to article 17.42 are, therefore, records of the judiciary and not subject to the Open Records Act." *Id.* at 3-4. Furthermore, because the personal bond agreements are agreements between the accused and the court, they also are records of the judiciary and are not subject to the Open Records Act. *Id.* at 4.

You indicate that the Travis County Pretrial Services Office is the personal bond program for Travis County. Consequently, we assume the office is a personal bond office created pursuant to article 17.42 of the Code of Criminal Procedure. We further assume that the office functions as a gatherer and reviewer of information relevant to an accused that may bear on whether the accused will comply with the conditions of a personal bond. *See* Code Crim. Proc. art. 17.42, § 1.

The documents you have submitted for our review, *see* Gov't Code § 552.303 (requiring governmental body that requests attorney general decision on open records request to supply to attorney general specific information requested), appear to consist of copies of file cards similar to those described in Open Records Decision No. 572 (1990) as "containing various information about the accused," *see* Open Records Decision No. 572 (1990) at 2, as well as copies of personal bond agreements. Consistent with

our conclusion in Open Records Decision No. 572 (1990), we here conclude that the requested information constitutes records of the judiciary that are not subject to disclosure under the Open Records Act.¹ The city need not release the requested information to the requestor.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 of the Government Code regarding any other records. If you have questions about this ruling, please contact this office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/LRD/rho

Ref.: ID# 32796

Enclosures: Submitted documents

cc: Ms. Cheryl Manor
c/o Mr. Anthony Freeman
1911 Hearthstone Drive, #1A
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(w/o enclosures)

¹We understand you have submitted only representative samples of material that you believe are records of the judiciary not subject to the Open Records Act. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain types of information substantially different from that submitted to this office.

²As this office suggested in Open Records Decision No. 572 (1990), other information maintained by the office may be subject to the Open Records Act. Open Records Decision No. 572 (1990) at 4. Moreover, with regard to the information we have considered here, we reiterate our statement in Open Records Decision No. 572 (1990): Our conclusion "does not preclude access to [the requested] information. We find only that access to this information is not governed by the Open Records Act, but is within the discretion of the courts." *Id.*