



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 5, 1996

Ms. Nancy H. Platt  
Interim Director  
Harris County Community Supervision  
and Corrections Department  
Courthouse Annex 21  
49 San Jacinto Street  
Houston, Texas 77002

OR96-1387

Dear Ms. Platt:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 100147.

The Harris County Community Supervision and Corrections Department (the "department") received a request for "the personnel files, including, but not limited to the applications for employment and the resumes or curriculum vitae of" 15 named department employees. You say the department will release the personnel file of Jerry Jones and that the department does not have any records for Bob Hardcastle. You assert that the records are not subject to required public disclosure because you contend they are not subject to the Open Records Act as records of the judiciary under section 552.003(b) of the Government Code. You also assert that the requested records are excepted from required public disclosure pursuant to sections 552.101, 552.102 and 552.103 of the Government Code.

We first must determine whether the requested records are records of a governmental body subject to the Open Records Act or, on the other hand, records of the judiciary, which are not subject to the Open Records Act. *See* Gov't Code § 552.003(B). We will reach our decision by examining the statutory functions of the department.

Provisions in chapter 76 of the Government Code provide for the establishment of a community supervision and corrections department. Section 76.002 provides that

(a) The district judge or district judges trying criminal cases in each judicial district shall:

(1) establish a community supervision and corrections department; and

(2) employ district personnel as necessary to conduct presentence investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision, and staff community corrections facilities.

In addition, the district judges and judges of statutory county courts are "entitled to participate in the management of the department." Gov't Code § 76.002(b). Section 76.004 directs the district judges to appoint a director of the department who employs other department personnel.<sup>1</sup> Community supervision and corrections departments are authorized to expend county, district, and state funds subject to various statutory limitations. *Id.* at §§ 76.008, 76.009, 76.010.

Because section 552.003 of the Government Code provides that, for purposes of the act, the term governmental body does not include the judiciary, we must determine whether the district judges in performing their statutory administrative oversight duties over supervision and corrections departments are performing judicial functions which would effectively incorporate such departments into the judiciary. Clearly, supervision and corrections departments are "supported in whole or in part by public funds," under section 552.002(A)(x). Thus, if these departments are not part of the judiciary, they will be considered governmental bodies subject to the Open Records Act.

In *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ), the court construed the purposes and limits of the judiciary exception. The *Benavides* court held that the Webb County Juvenile Board was not part of the judiciary for purposes of the act, despite the fact that the board consisted of members of the judiciary and the county judge. The court explained the purpose of the judiciary exception as follows:

The judiciary exception...is important to safeguard judicial proceedings and maintain the independence of the judicial branch of government, preserving statutory and case law already governing access to judicial records. But it must not be extended to every governmental entity having any connection with the judiciary.

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<sup>1</sup>In Attorney General Opinion DM-208, this office concluded that the term "employ" found in section 76.002 authorizes district judges to compensate but not to hire district personnel. That decision further concluded that section 76.004 authorizes a department director, appointed by the district judges, to "employ" or hire department personnel. Attorney General Opinion DM-208 (1992).

....

The Board is not a court. A separate entity, the juvenile court, not the Board, exists to adjudicate matters concerning juveniles. . . . Moreover, simply because the Legislature chose judges as Board members, art. 5139JJJ, § 1, [V.T.C.S.,] does not in itself indicate they perform on the Board as members of the judiciary. . . . The Board's role as described in art. 5139JJJ is exclusively administrative.

*Benavides*, 665 S.W.2d at 151-52; *see also* Open Records Decision No. 572 (1990) at 3 (concluding that "analysis of the judiciary exception should focus on the governmental body itself and the kind of information requested") (citing *Benavides*, 665 S.W.2d at 151).

*Benavides* dealt with the question of whether the specific exclusion of the "judiciary" from the Open Records Act applied to resumes of applicants for the position of juvenile probation officer in the hands of a juvenile board composed of members of the judiciary and the county judge. The court found that the board's selection of a probation officer "is simply part of the Board's administration of the juvenile probation system, not a judicial act by a judicial body," and held that the board is a governmental body subject to the Open Records Act, thus requiring public release of the requested records. *Id.* at 152; *see also, e.g.*, Open Records Decision Nos. 527 (1989) at 3 (relying on *Benavides*), 417 (1984) at 1 (same).

We believe that the analysis used in *Benavides* controls in this instance. The function that a governmental entity performs determines whether the entity falls within the judiciary exception to the Open Records Act. If the entity, comprised of judges, performs primarily administrative functions, the entity is not judicial in nature and is thus subject to the Open Records Act. In this case, the role of district judges in the oversight of a supervision and corrections department is purely administrative in nature. Furthermore, records regarding the administration of a supervisions and corrections department, such as personnel files, deal solely with the judges' administration of an individual department. The judges' oversight of a department does not determine whether the departments' records are records of the judiciary. The judges connected with a department do not act in a judicial capacity regarding these administrative matters nor are such records prepared for the use of a court in its judicial capacity. Moreover, as in *Benavides*, the statute governing community supervision and corrections departments suggests that members of the judiciary who are involved in community supervision and corrections departments perform administrative as opposed to judicial functions. *See Benavides*, 665 S.W.2d at 152 ("classification of the Board as judicial or not depends on the functions of the Board, not on members' service elsewhere in government").

Accordingly, the department is not part of the judiciary for purposes of the Open Records Act.<sup>2</sup> Consequently, the department's records may be subject to public disclosure under the Open Records Act.

We now consider whether the requested information is excepted from required public disclosure based on one of the exceptions to disclosure you raise. Section 552.103(a) applies to information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, 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; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991).

You inform us that an employee has filed with the Equal Employment Opportunity Commission (the "EEOC") a complaint of race and sex discrimination against the department. In this instance, we conclude that you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). See Open Records Decision No. 386 (1983) (pendency of EEOC complaint establishes that litigation is reasonably anticipated). The requested records may therefore be withheld.<sup>3</sup>

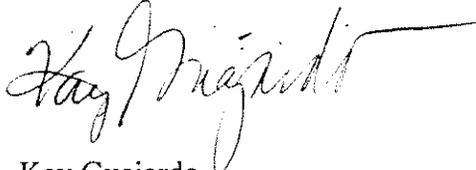
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<sup>2</sup>Relying on the analysis in *Benavides*, this office has recently concluded that meetings of judges to perform statutory functions with respect to the management of a community supervision and corrections department are subject to the Open Meetings Act, chapter 551, Government Code. Attorney General Opinion DM-395 (1996). That decision concluded that "a court would probably characterize the statutory functions of the committee of judges here with respect to the CSCD--the appointment of the CSCD director and approval of CSCD expenditures--as administrative rather than judicial." *Id.* at 5. Furthermore, that decision concluded that "we do not believe [the committee of judges] should be considered one within the judicial branch of state government." *Id.*

<sup>3</sup>We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Having concluded that the department may withhold the requested records based on section 552.103, we need not address the other exceptions you raise at this time. We are resolving this matter with this 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 100147

Enclosures: Submitted documents

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