



The Attorney General of Texas

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Honorable Odis R. Hill
Criminal District Attorney
Gregg County Courthouse
Longview, Texas 75601

Open Records Decision No. 236

Re: Whether probationer's records
maintained by an adult probation
office are public.

Dear Mr. Hill:

You have requested our opinion as to whether certain records maintained by the Gregg County adult probation office are available to the public. The specific information requested is that portion of the files of probationers which indicate whether they are complying with the terms of their probation. You contend that this information is held by the probation office on behalf, and subject to the control of, the district judge of Gregg County, and, as such, is not subject to the provisions of the Open Records Act.

After defining "governmental body," in section 2(1) of article 6252-17a, V.T.C.S., the Open Records Act also provides in that section that

(G) the Judiciary is not included within this definition.

Article 42.12, Texas Code of Criminal Procedure, provides, in pertinent part:

Section 1. It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers, in consonance with the powers assigned to the judicial branch of the government by the Constitution of Texas. . . .

....

Sec. 10 (a) For the purpose of providing adequate probation services, the district judge or district judges trying criminal cases in each judicial district

in this state shall establish a probation office and employ, in accordance with standards set by the [Texas Adult Probation] commission, district personnel as may be necessary to conduct presentence investigations, supervise and rehabilitate probationers, and enforce the terms and conditions of misdemeanor and felony probation. . . .

(b) Where more than one probation officer is required, the judge or judges shall appoint a chief adult probation officer or director, who, with their approval, shall appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the court.

. . . .

(g) Personnel of the respective district probation departments shall not be deemed state employees. . . .

In Open Records Decision No. 136 (1976), a request for an attorney's file was made to the State Board of Law Examiners, whose members are appointed and subject to removal by the Supreme Court, and are directed to act under the rules and instructions of the Court. This office held:

We believe the information collected, assembled and maintained by the Board is held on behalf of the judiciary, and that the Board, as an agency directly responsible to and under the control of the Supreme Court, is not subject to the provisions of the Open Records Act. . . .

See also Open Records Decision No. 131 (1976) (applicants for employment as court coordinator for Dallas County criminal courts constitutes a record of the judiciary). But c.f., Open Records Decision No. 78 (1975) (sheriff subject to Open Records Act even though a member of the "judicial department"); Open Records Decision No. 188 (1978) (list of applicants for appointment as municipal court judge is a record of the city council, which makes the appointment, rather than a record of the judiciary).

In the present instance, we believe that the principle of Open Records Decision No. 136 (1976) is applicable. Probation officers are employed by a district judge and subject to his supervision and control. Since the probation officer is thus an agent of the district judge, and acts according to his direction, it is our view that the requested information is a record of the judiciary and, as a result, not subject to the Open Records Act.

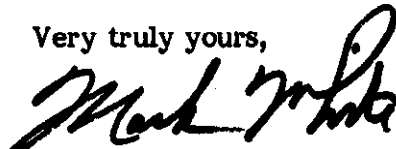
As to the availability of the information outside the scope of the Open Records Act, we believe that decision is within the discretion of the court, acting through its agent, the probation officer. The records about which you inquire here involve the administration of a continuing judicial function — whether a probationer is complying with the terms set by the court — and the court's supervision over the probationer continues throughout the

term of his probation. As this office said in Attorney General Opinion H-826 (1976), a "court has inherent power to control public access to its own records." See Attorney General Opinion H-826 (1976), and opinions cited therein.

S U M M A R Y

Records of an adult probation office which indicate whether probationers are complying with the terms of their probation are records of the "judiciary" and thus not subject to the Open Records Act. It is within the court's discretion as to whether to release such information.

Very truly yours,



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