



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 30, 1994

Ms. Marilyn Barnes
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR94-319

Dear Ms. Barnes:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 24579.

Harris County (the "county") has received a request for a computer "print-out of all remaining trust funds on hand (unpaid) through September, 1994 from the district and county clerk." The county asserts that these records are not subject to the act, citing section 552.003(b). In the alternative, it asserts that these records are excepted from required public disclosure under section 552.101.

Section 552.003(b) excludes the judiciary from the term "governmental body" thus excepting records of the judiciary from the scope of the act. We understand that the county commissioners court provides a depository for the trust funds of the county clerk and district clerk. *See Local Gov't Code ch. 117. Section 117.058(b) of the Local Government Code provides that in such circumstances, the county clerk and district clerk are required to "make reports under oath to the county auditor to properly reflect all trust funds received and disbursed by the officer, including all money remaining on hand at the time of the report."* You contend that these records are judicial records because the funds at issue are controlled by the judiciary rather than the county, citing Attorney General Opinion JM-446 (1986). We disagree.

The facts at issue here are analogous to those addressed by this office in Open Records Decision No. 553 (1990). In that case, the Texas Department of Public Safety ("DPS") had received a request for reports on wiretaps. Judges were required to submit these reports to DPS by statute. This office concluded that the records were not records of the judiciary:

A judge's report to [DPS] relates information relevant to the judicial action of ordering a wiretap. Nonetheless, the judge has a statutory duty to report this information to [DPS], and [DPS] holds this information in its own right, and not as agent for the judges. *Cf.* Attorney General Opinion JM-446 (1986) (State Purchasing and General Services Commission acts as agent of the Supreme Court in maintaining court's telephone records). The reports held by [DPS] are not records of the judiciary within the Open Records Act.

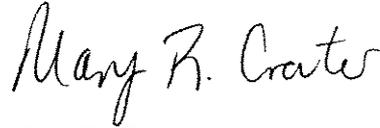
Open Records Decision No. 553 at 3. Similarly, here it is plain from the facts asserted by the county that the county clerk and district clerk have a statutory duty to make these reports to the county auditor, and that the county holds these reports in its own right, not as an agent for the county clerk and district clerk. Therefore, we conclude that Attorney General Opinion JM-446 is distinguishable and that Open Records Decision No. 553 is controlling. Accordingly, we conclude that the requested records are not records of the judiciary and that they are subject to the act.

The county also asserts that these records are excepted from required public disclosure under section 552.101 of the act and the doctrine of common-law privacy, because it would reveal private financial information. In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court concluded that section 552.101 of the act protects from required public disclosure information the release of which would constitute the common-law tort of invasion of privacy. In order to be excepted from required public disclosure under the doctrine of common-law privacy, records must contain highly intimate or embarrassing information about a person's private affairs and be of no legitimate concern to the public. *Id.* at 685. Given that this information relates to deposits, bonds, judgments, and payments collected in court proceedings that are a matter of public record, we are not persuaded that this information is "highly intimate or embarrassing." Furthermore, given that these moneys are kept in a county depository, we believe that this information is of legitimate public interest. *Cf.* Open Records Decision Nos. 600 (1992); 545 (1990) (there is a legitimate public interest in the essential facts about a transaction between an individual and a governmental body). We therefore conclude that the requested information is not confidential under section 552.101,¹ and that it must be released.

¹Given that this information relates to matters of public record and that there is a legitimate public interest in this information, we do not believe it is protected under the constitution. Nor do we believe that the requested information relating to child support payments is confidential under section 76.006 of the Human Resources Code. That provision makes confidential "files and records" of the attorney general relating to child support collection services provided by the attorney general under chapter 76. It does not make information relating to child support payments confidential regardless of the custodian, and we conclude that it does not apply to the information requested here. Indeed, Open Records Decision No. 417 (1984), upon which you rely, acknowledges that information that might have been confidential under the

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/SLG/rho

Ref.: ID# 24579

Enclosures: Submitted documents

cc: Mr. Richard B. Eason
UCM
P.O. Box 577
Burleson, Texas 76097-0577
(w/o enclosures)

(Footnote continued)

predecessor to section 76.006 "may be available from the records of the court which ordered the parent to pay child support." Open Records Decision No. 417 at 4.