



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 31, 1995

Mr. Tom O'Connell
Criminal District Attorney
Collin County Courthouse
210 South McDonald, Suite 324
McKinney, Texas 75069

OR95-316

Dear Mr. O'Connell:

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 ID# 29319.

You first claim that the Open Records Act does not apply to the Criminal District Attorney's office because you believe the office is a part of the judiciary, which is exempt from the act under section 552.003(b). As long ago as 1984, this office held that a district attorney's office is covered by the act. Attorney General Opinion JM-266 (1984); *see also* Open Records Decision No. 553 (1990). Furthermore, the Travis County District Court recently upheld this position. *See Holmes v. Morales*, No. 93-07978 (261st Dist. Ct., Travis County, Tex., Feb. 14, 1994). Therefore, your office is a governmental body within the act and must make its records available to the public under the act.

The Collin County District Attorney's Office has received a request for seventeen¹ items related to the requestor's arrest and pending prosecution for speeding. In regard to the items numbered one through six (excepting number two), you state that your office should not be required to produce the requested items because they "can be found in any public library in Texas and are not specifically maintained or owned by the Collin County District Attorney's Office." We agree with you in respect to the items one through four, which seek general constitutional and statutory authority for the state's exercise of jurisdiction over an individual. The district attorney's office certainly has access to the state and federal constitutions and statutes, but because the requestor does

¹The actual list of requested materials numbers up to eighteen but contains no number two.

not ask for any specific, identified documents, this request would require the office to perform research to determine exactly what provisions respond to the request. The Open Records Act does not require a governmental body to perform legal research for a requestor nor to answer general questions. Open Records Decision No. 563 (1990) at 8. Similarly, the items numbered five and six involve factual matters (any waivers of defendant's rights and proof regarding defendant's use of road). The Open Records Act does not require custodians of records to respond to factual inquiries. Open Records Decision No. 379 (1983) at 4.

You claim that your office does not have nine of the remaining twelve items (numbers 7, 9, 10, 11, 12, 13, 14, 16, and 18) and that one item does not exist (number 17). The Open Records Act does not require a governmental body to obtain records that are not in its possession, Open Records Decision No. 362 (1983) at 2, or to make available records that do not exist, Open Records Decision No. 518 (1989) at 2.

Your response to item number eight ("A certified copy of the Statement of Office and the Oath of Office of Gale Falco") is inadequate. You simply cite article 2.01 of the Code of Criminal Procedure, which details the duties of district attorneys and has nothing to do with the statement and oath of office. Presumably, this request is seeking the statement and oath required by section 1, article XVI of the Texas Constitution. If Ms. Falco took this oath² and your office has a copy of the oath, you must release it.

Finally, the three documents that you have sent for our review are the "regular check details" of the assistant district attorney's last three pay checks (number 15). The information on these check details is largely public, but some information on these documents may be confidential under section 552.101 of the Open Records Act, and we will recognize that exception even if you did not claim it.

A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii). In relevant part, the 1990 amendments to the federal Social Security Act make confidential social security account numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). This office is unable to determine whether the social security number at issue here is confidential under federal law. On the other hand, section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, before releasing the social security number contained on these documents, you should ensure that it was not obtained pursuant to a law enacted on or after October 1, 1990. If you find that the number is made confidential by federal law, you must excise it before releasing these documents.

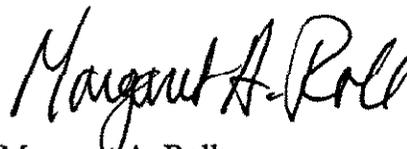
²Article XVI, section 1 of the Texas Constitution does not make clear whether Ms. Falco is required to take this oath. In this ruling, this office expresses no opinion regarding this issue.

Common-law privacy under section 552.101 protects certain financial information relating to an individual. To be protected by common-law privacy, information must be highly intimate or embarrassing and of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Financial information relating to an individual normally satisfies the first prong of this test. However, the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision No. 600 (1992) at 9. On the other hand, if a public employee allocates some of his or her salary to a voluntary investment program or another optional benefit program to which the governmental body makes no contribution, that decision is a personal financial decision and is not of any legitimate concern to the public. *Id.*; Open Records Decision No. 545 (1990).

Under this standard, you may not withhold the essential facts about an employee's participation in the Texas County and District Retirement System, but you must excise information on these check details that relates to deferred compensation plans and to optional insurance. Participation in the Texas County and District Retirement System Retirement System is not optional when it has been adopted by the county, and contributions are paid in part by the county. See Gov't Code §§ 845.403, .404. Therefore, the public has a legitimate interest in all the information about this system except the names of the member's beneficiaries. Open Records Decision No. 600 (1992) at 10. The public does not, however, have a legitimate interest in an employee's personal financial choices. Open Records Decision No. 545 (1990). Therefore, to the extent that deductions from gross earnings indicate the employee's personal, optional, financial decisions you must excise both the purpose of the deduction and the dollar amount.

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 should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Ref.: ID# 29319

Enclosures: Submitted documents

cc: Mr. Clifford F. Sharp
c/o 8745 Graywood Dr.
Dallas, State Republic
Non-domestic, Carrier Route 4368
(w/o enclosures)