



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1998

Ms. Marva M. Gay
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR98-0129

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112324.

The presiding judge, acting prosecutor, and chief court clerk for justice court, precinct 4, position 1 (collectively, the "county"), whom you represent, received a request for information relating to a traffic violation. You assert that the county is not the custodian of some of the requested information, and therefore, pursuant to section 552.201(b) of the Government Code, cannot respond to the request for such information. You also argue that responding to the request for the remaining requested information would require the county to perform legal research, which is not required of the county under section 552.227 of the Government Code. Finally, you assert that some of the requested information may be withheld under Government Code section 552.103.

Initially, with regard to your assertion that the county is not the custodian of the information requested in items 5-7, we note that the Open Records Act does not ordinarily require a governmental body to obtain information not in its possession, Open Records Decision Nos. 558 (1990), 518 (1989), 499 (1988), or to obtain information from another entity, so long as the entity does not hold the information on behalf of the governmental body, Open Records Decision No. 534 (1989), or to obtain new information in order to comply with a request, Open Records Decision No. 561 (1990), or to take affirmative steps to create or obtain information that is not in its possession, Open Records Decision No. 534 (1989). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990) at 8. If the county holds records from which the requested information can be obtained, the county must provide that information to the requestor unless it is otherwise excepted from disclosure.

Next, you also contend that answering the request would require the county to perform legal research and that the county is, therefore, not obligated to respond to the request. In Open Records Decision No. 563 (1990), the requestor sought documents showing the authority of a non-profit corporation to engage in various activities. We ruled as follows:

While couched as requests for documents, these are essentially requests for federal and state laws and regulations governing the activities of the corporation and for a statement of the corporation's interpretation of these provisions. The Open Records Act does not require a governmental body to perform legal research for a requestor nor to answer general questions.

Id. at 8. Request items 1-4 and 7-9 are analogous to the request we dealt with in Open Records Decision No. 563 (1990), and we thus conclude that the county is not required to respond to the request since legal research is required to secure the information.

Lastly, in response to request item 3, you state that if the requestor "actually intended to obtain documents relating to charges pending against him in case #01227819, then that information would be exempt" under section 552.103 of the Government Code. When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.¹ Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. You inform this office that litigation-related information contained in Exhibit B was given to the requestor in response to a previous request. Accordingly, you may not withhold this information under section 552.103. Furthermore, we note that as you have not submitted any documents for our review, you may not withhold any other documents under section 552.103.

¹552.103(a) excepts from required public disclosure 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.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

Open Records Division
Office of the Attorney General

Ref: ID# 112324

cc: Mr. Winston Stuart: Churchill
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