



April 24, 2002

Mr. John Feldt  
Assistant District Attorney  
Denton County  
P.O. Box 2850  
Denton, Texas 76202

OR2002-2113

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161843.

The Denton County Clerk (the "county clerk") received a request for all documents related to the January 2002 investigation involving the requestor. You advise that you have released nearly all of the information that is responsive to the request. You claim that the remaining requested information is not "public information" for purposes of the Public Information Act ("the Act"), or that alternatively, this information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and have reviewed the submitted information.

We will first address whether the submitted information is considered public information. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Further, the holding in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), makes clear that almost all information in the physical possession of a governmental body is "public information" subject to the Act. Thus, information collected by a public employee in the course of his employment is "information collected . . . in connection with the transaction of official business" within the meaning of Act. See Open Records Decision No. 549 (1990).

You argue that the submitted information, contained on a CD-Rom, was not collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business, in that it was generated by a county employee who was violating county policy. Specifically, you explain that the information consists of legal documents prepared by the employee for members of the public, when this activity was not part of her assigned

job duties. Further, you argue that the employee was not in any way authorized to perform these services, and the activity was not approved of, or condoned by, her supervisors. However, it is clear that the requested information involves an internal investigation and is evidence in a criminal investigation, which relate to the transaction of official county business. Therefore, any information pertaining to the investigations at issue, in existence on the date the county clerk received the request, is public information subject to the Act.

We now address your claim that the information at issue is excepted from disclosure under section 552.108. Section 552.108 states that “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). The county clerk is neither a law enforcement agency nor a prosecutor. However, this exception may be asserted by a custodian of records on behalf of another governmental body which is a law enforcement agency or prosecutor. *See, e.g.*, Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to incident). The Assistant District Attorney advises that the Denton County Criminal District Attorney’s Office is currently reviewing evidence and investigating whether the contents of the submitted CD-Rom warrant an expanded inquiry into whether a criminal offense has been committed and should be prosecuted. You further explain that the information is evidence in an active criminal investigation. You argue that release of this information would therefore interfere with the detection, investigation, and prosecution of crime. Based on these representations, we find that release of the submitted CD-Rom would interfere with the detection, investigation, or prosecution of crime. Thus, we conclude that the county clerk may withhold this information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on

the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 161843

Enc: Submitted documents

c: Ms. Rosemary Struble  
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(w/o enclosures)