ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2003

Ms. Myrna S. Reingold
Galveston County
4127 Shearn Moody Plaza
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Galveston, Texas 77550-1454

OR2003-7817

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192263.

The Galveston County District Attorney's Office (the "DA") received a request for recordings of telephone conversations between Robert Durst and other parties made while he was in custody in Pennsylvania, and copies of any transcripts of any recordings of conversations between Durst and any other party made while he was in custody in Pennsylvania. You claim that the requested information is not subject to the Public Information Act (the "Act"), chapter 552 of the Government Code. Alternatively, you claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Act. We have considered the exceptions you claim and reviewed the submitted materials. We have also considered comments submitted by Robert Durst's attorneys. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we will address your argument that the DA does not have information responsive to the request. "Public information" is defined as "information that is collected, assembled, or maintained . . . by a governmental body; or . . . for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). The Act applies only to information that a governmental body possesses or has access to at the time it is requested.[1] The Act does not ordinarily require a governmental

[1]It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351.

body to obtain information not in its possession and to which it has no right of access. Open Records Decision Nos. 663 at 7 (1999), 558 (1990), 499 (1988). The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.–San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986); *see also* Open Records Decision Nos. 452 at 2-3 (1986) (document is not within purview of predecessor to Act if, when governmental body receives a request for it, it does not exist), 342 at 3 (1982) (predecessor to Act applies only to information in existence, and does not require governmental body to prepare new information). Furthermore, the Act does not require a governmental body to create information in response to a request. *See* Open Records Decision 452 (1986).

You state that the DA had "neither possession of nor access to any of the transcriptions of the audio recordings prior to and through the date of receipt of the request." You also state that the DA relinquished its custody of all audio recordings to the 212th District Court of Galveston County, Texas. Therefore, you also assert that the DA "had no CDs in its possession and did not have a right of access to the CDs and accordingly held no information responsive to this portion of the Requestor's request." Accordingly, we conclude the DA did not hold or have access to any information responsive to the present request, and need not comply with this request. Because our ruling on this issue is dispositive, we need not address the exceptions you claim under the Act or the comments submitted by Durst's attorneys.

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 Dep't of Pub. 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,

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 192263

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