



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 29, 2016

Mr. Ira Davis  
Executive Director  
Capital Area Private Defender Service  
816 Congress Avenue, Suite 700  
Austin, Texas 78701

OR2016-09742

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 608197.

The Capital Area Private Defender Service ("CAPDS") received a request for several specified categories of information, including (1) the names of attorneys approved for court appointments; (2) the evaluations used to determine attorney assignments; (3) the records used in evaluating the requestor; (4) the names of the individuals who participated in attorney evaluations; and (5) all case numbers assigned to certain attorneys.<sup>1</sup> You state you have released some information to the requestor. You claim a portion of the requested information is not subject to the Act. We have considered your arguments and reviewed the submitted information.

You argue portions of the request would require CAPDS to create new information. You explain CAPDS does not have a list or document containing the names of all persons who provided input in the selection of attorneys. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response

---

<sup>1</sup>You state CAPDS sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

to a request for information. *See Econ. Oppotunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismiss'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to any responsive information the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). Therefore, while CAPDS is not required to create documents that did not exist at the time of the request, documents from which this information may be derived are responsive to this request. Accordingly, to the extent any documentation exists for the portions of the request at issue, it would be responsive to the request and, as CAPDS raises no exception against disclosure of this information, it must be released. However, we will address your argument for the submitted information.

CAPDS claims the case numbers assigned to certain attorneys are not “public information” of CAPDS subject to the Act. Section 552.002(a) defines “public information” as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information; [or]
  - (B) has a right of access to the information[.]

...

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

*Id.* § 552.002(a)(1), (2)(A)-(B), (a-1). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess, if the information is written, produced, collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). Moreover, section 552.001 of the Act provides it is the policy of this state that each person

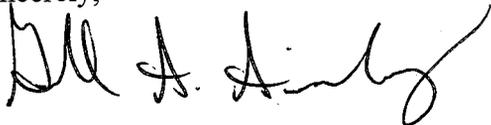
is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a).

You state CAPDS is responsible for approving all attorneys eligible to receive assignments to criminal cases and setting various policies regarding the process of assignments. However, you state the individual assignments are completed by Travis County (the "county") each day on a rotational basis. You explain CAPDS has limited access to a web-based application hosted, secured, and maintained by the county to perform its contractual obligations. The county uses information within the web-based application to create an assignment order that is filed with the county clerk. You state the web-based application stores each attorney assignment. You assert although CAPDS has access to the application, the application is owned by the county, and, thus, the records of case numbers assigned to certain attorneys are maintained by the county in the transaction of the county's official business. Accordingly, you argue the requested case numbers are not information written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business of CAPDS. Based on your representations and our review, we find the requested case number assignments are not maintained in connection with the transaction of official business of CAPDS. *See* Gov't Code § 552.021. Therefore, we conclude the requested case number assignments are not subject to the Act and need not be released in response to this request.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/dls

Ref: ID# 608197

Enc. Submitted documents

c: Requestor  
(w/o enclosures)