



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

May 11, 1976

Mr. Arthur Mitchell
Mitchell, George & Belt
Westgate Building
1122 Colorado
Austin, Texas 78701

Open Records Decision No. 126

Re: Request for information held by Attorney General concerning specified parties.

Dear Mr. Mitchell:

You have requested this office to provide you access to all information we have collected, assembled or maintained concerning your clients, Mr. Clinton Manges and/or Duval County Ranch Company. You make your request pursuant to the Open Records Act, article 6252-17a, V.T.C.S. We presume that your request does not extend to any information we might possess which was put in the record in the recent Senate impeachment trial of Judge O. P. Carrillo, since that information is publicly available.

Your request presents a unique situation in which the Attorney General acts as custodian of this information, while at the same time he has a duty under section 7 of the Act to review a custodian's determination that an exception is applicable to requested records.

The Attorney General's decision under section 7 must be "consistent with standards of due process." We recognize that some question might exist as to whether the Attorney General can perform the several duties required in this instance and maintain the appearance of fairness and impartiality toward which our system of law endeavors. However, the Act provides no alternative administrative tribunal, and thus, by necessity, we believe that we must attempt to perform our duty under section 7 of the Act insofar as possible, so as not to prevent a determination in this case.

Upon receipt of your request, as custodian of the records of this office, I determined that any information requested would be excepted from required public disclosure. I referred the matter to the Opinion Division of this office to be subjected to the same type review given to regular requests for Open Records Decisions. After review, the Opinion Division also concluded that the information was excepted from required public disclosure. In the interest of complying with the Act insofar as possible, we hereby present the reasons for our decision that the information is excepted from required public disclosure.

We believe that any information this office may have concerning the subjects of your request would be excepted from required public disclosure by sections 3(a)(1), 3(a)(3), 3(a)(7), or 3(a)(8), or a combination of these exceptions.

Any information this office holds concerning the subjects of your request would either be held pursuant to our representation of the Judicial Qualifications Commission in the investigation into the activities of Judge O.P. Carrillo, or as part of our law enforcement efforts conducted by our Crime Strike Force.

Any information this office possesses concerning the subjects of the request pursuant to representation of the Judicial Qualifications Commission would be excepted from required public disclosure by sections 3(a)(1), and 3(a)(7) of the Act. This office acts as counsel to the Judicial Qualifications Commission in investigations and proceedings pursuant to section 2, article 5966a, V.T.C.S., which reads in part:

The Attorney General shall, if requested by the commission, act as its counsel generally or in any particular investigation or proceeding.

Article 38.10 of the Code of Criminal Procedure provides in pertinent part:

[A]n attorney at law shall not disclose a communication made to him by his client during the existence of that relationship, nor disclose any other fact which came to the knowledge of such attorney by reason of such relationship.

Mr. Arthur Mitchell - page 3

This article applies to both criminal and civil cases. Williams v. Williams, 108 S.W.2d 297 (Tex. Civ. App. -- Amarillo 1937, no writ).

The Judicial Qualifications Commission is established by section 1-a of article 5 of the Texas Constitution. Paragraph (10) of this section provides:

All papers filed with and proceedings before the Commission or a Master shall be confidential, and the filing of papers with, and the giving of testimony before, the Commission, Master or the Supreme Court shall be privileged; provided that upon being filed in the Supreme Court the record loses its confidential character.

The Texas Supreme Court has said that in the case of investigations of judicial misconduct, this Constitutional provision preserves the confidentiality of the information. In re Brown, 512 S.W.2d 317, 321 (Tex. Sup. 1974). We believe that any information obtained by this office pursuant to representation of our client, the Judicial Qualifications Commission, in an investigation is excepted from required public disclosure under section 3(a)(1) as information deemed confidential by law, to wit: article 38.10 of the Code of Criminal Procedure and section 1-a of article 5 of the Texas Constitution.

In addition, section 3(a)(7) of the Act excepts from required public disclosure:

[M]atters in which the duty of the Attorney General of Texas . . . to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure. . . .

Canon 4 of the Code of Professional Responsibility provides: "A Lawyer Should Preserve the Confidences and Secrets of a Client." State Bar of Texas, Rules and Code of Professional Responsibility, canon 4 (1971). "Secret" refers to "information gained in the professional relation-

ship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." State Bar of Texas, Rules and Code of Professional Responsibility, DR4-101(A) (1971).

It is our position that in this instance it would be a violation of canon 4 to disclose information gathered pursuant to representing our client, the Judicial Qualifications Commission, and any such information is thus excepted from required public disclosure by section 3(a)(7) of the Open Records Act.

In our opinion, any information this office possesses concerning the subjects of the request pursuant to an investigation of possible criminal conduct by the Crime Strike Force is excepted from required public disclosure by section 3(a)(8) which excepts:

[R]ecords of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement.

The issue is whether the Attorney General's Office, or a part thereof, is within the meaning of "law enforcement agency."

The Crime Strike Force is a distinct organizational unit of this office which coordinates investigations of crimes of statewide import with local prosecutors and the Texas Department of Public Safety. It assists the Attorney General in performing his law enforcement duties under such statutes as article 4413(23), V.T.C.S., article 20.03, Code Crim. Proc., 20.05, Code Crim. Proc., article 9.02, Election Code and the Securities Act, article 581-3, V.T.C.S.

Therefore, it is our position that the Crime Strike Force is a "law enforcement agency" within the meaning of section 3(a)(8) of the Act. Thus, any materials falling within the request which this office may have collected, assembled or may be maintaining in connection with the activities of the Crime Strike Force are excepted from required public disclosure as records of a law enforcement agency that deal with the detection and investigation of crime, and are excepted from disclosure by section 3(a)(8) of the Open Records Act.

Finally, it is our position that if any information within the request is held by this office and not excepted from required public disclosure by section 3(a)(1), 3(a)(7) or 3(a)(8), it is excepted from required public disclosure by section 3(a)(3), as

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or a political subdivision is, or may be, a party. . . that the attorney general . . . has determined should be withheld from public disclosure.

This exception is applicable prior to, as well as during, litigation. The anticipation of litigation must be a reasonable one related to a specific matter. Attorney General Opinion H-483 (1974).

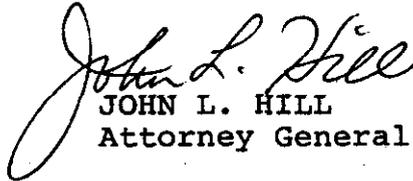
On the basis of information made public in various proceedings concerning events and activities in Duval County, we believe that criminal or civil litigation to which the state or a political subdivision thereof may be a party may be reasonably anticipated.

Mr. Arthur Mitchell - page 6

This exception clearly gives the Attorney General the authority to make a reasonable determination that information should be withheld from public disclosure in a matter such as this where litigation is pending or reasonably anticipated. Open Records Decision No. 105 (1975). We hereby determine that such information should be withheld from public disclosure at this time.

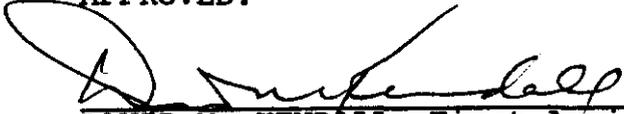
In summary, it is our decision that any information held by this office which falls within the request is excepted from required public disclosure by one or more of the exceptions contained in sections 3(a)(1), 3(a)(3), 3(a)(7), and 3(a)(8) of the Open Records Act.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant

C. ROBERT HEATH, Chairman
Opinion Committee

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