



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 29, 1996

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR96-1327

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35639.

The Harris County District Attorney (the "district attorney") received a request for "checking accounts at American Bank - of checkbooks, stubs, receipts, deposits, and canceled checks (front & back) of the John B. Holmes, Jr. Special . . . and Holmes/Stricklin [accounts] for the years of 1990, 1991, 1992, 1993, 1994 and 1995 to date." You have submitted representative samples for our review.¹ You claim that the requested information is excepted from disclosure by sections 552.101, 552.103, 552.107, and 552.108 of the Government Code.²

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes as well as information protected by *common-law and constitutional privacy*. We have reviewed the information submitted for our review and find nothing protected by other statutes or privacy. Therefore, the district

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²You state that the district attorney does not have documents regarding one of the account numbers. We note that a governmental body is not required to take affirmative steps to create or obtain information that is not in its possession. Open Records Decision No. 534 (1989).

attorney may not withhold this information from required public disclosure under section 552.101.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The district attorney has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *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. The district attorney must meet both prongs of this test for information to be excepted under section 552.103(a).

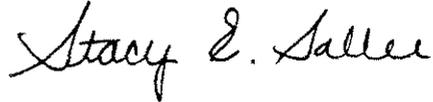
Here, the requested information is for payments made from and deposits made into a bank account maintained by the district attorney. The documents submitted to this office show travel reimbursements and other reimbursements to assistant district attorneys for expenses presumably associated with lawsuits. However, the district attorney has not established the relatedness of this requested information to the subject matter of any particular litigation. We conclude that this information relates more to the expenditure and receipt of public funds rather than the subject matter of any litigation handled by the district attorney. Therefore, the district attorney may not withhold this information under section 552.103 of the Government Code.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. The requested documents do not fall within this exception, as they are not "privileged information" communicated from attorney to client. Therefore, the district attorney may not withhold this information under section 552.107 of the Government Code.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We do not believe that the exception applies to these documents, revealing only the amounts of deposits and expenditures out of this special account. We believe such information only indirectly "deals with the detection, investigation, or prosecution of crime" and, as with section 552.103, more directly deals with the expenditure and receipt of public funds. Therefore, the district attorney may not withhold this information under section 552.108 of the Government Code.

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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 35639

Enclosures: Submitted documents

cc: Mr. E. L. Wheeler
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(w/o enclosures)