



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 20, 1997

Ms. Marva M. Gay  
Assistant County Attorney  
Harris County  
1001 Preston, Suite 634  
Houston, Texas 77002 -1891

OR97-0581

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104491.

The Harris County Attorney's Office (the "county attorney") received a request for a wide variety of information from the law enforcement oversight committee of H.E.L.P. - Texas (advocates for Honest, Ethical, Legal Practice - Texas).<sup>1</sup> You assert that the county attorney is not the custodian of much of the information sought and therefore, pursuant to section 552.201(b) of the Government Code, cannot respond to the request for such information. You also argue that responding to the request for some of the requested information would require the county attorney to perform legal research, which is not required of the county attorney under section 552.227 of the Government Code. Finally, you assert that the records may be withheld in their entirety under Government Code section 552.101. We have considered your arguments and have reviewed the information submitted.

Initially, with regard to your assertion that neither the county attorney nor District Judge Robert Echols are custodians of the some of the information requested, we note the Open Records Act does not ordinarily require a governmental body to obtain information not in its possession,

---

<sup>1</sup>The request for information to the county attorney was received by that office on December 19, 1996, and was addressed to District Attorney John B. Holmes, County Attorney Mike Driscoll, and Judge Robert Echols of the County Commissioners Court. The county attorney received another request from the same requestor on January 7, 1997, which was identical to the December 19 request except that it contained a "warning paragraph" and was addressed to Roberta A. Lloyd, Assistant County Attorney, as well as to County Attorney Michael P. Fleming. Because these requests seek identical information from the Office of the County Attorney, we are addressing them in this single open records letter. The request to the District Attorney was given a separate identification number and will be handled as a separate open records letter.

Open Records Decision Nos. 558 (1990), 499 (1988), 518 (1989); or to obtain information from another entity, so long as the entity does not hold the information on behalf of the governmental body, Open Records Decision No. 534 (1989); or to obtain new information in order to comply with a request, Open Records Decision No. 561 (1990); or to take affirmative steps to create or obtain information that is not in its possession, Open Records Decision No. 534 (1989). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990) at 8. If the county attorney holds information from which the requested information can be obtained, he must provide that information to the requestor unless it is otherwise excepted from disclosure.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You assert that the request for information, taken as a whole, appears to be of the type that was recently enjoined in the case of *Morales, et al. v. Kirk, et al.*, Cause No. 96 07354 (Travis Co., Tex. Dist. Ct. 98th Jud. Dist.). The injunction there prohibited persons associated with the Republic of Texas from engaging in five types of conduct including harassing judicial personnel, attorneys or witnesses. You assert that, given the past actions of supporters and participants of the Republic of Texas, the requested information may be used by such individuals to "indict" or take other action against the county attorney and others named in the requested information. Upon review of the injunction order issued in *Morales, et al. v. Kirk, et al.*, we cannot conclude that a request under the Open Records Act constitutes "harassment" for purposes of the injunction. We also note that a governing body is precluded under the Open Records Act from making an inquiry of the requestor concerning the use to be made of requested information. Gov. Code § 552.222. Therefore, we cannot conclude that the requested information is confidential by judicial decision and thus, it may not be withheld under section 552.101.

You also contend that answering requests numbered 1 through 4, 7 through 12, and 16 through 21 would require the county attorney to perform legal research and that the county attorney is, therefore, not obligated to respond to these requests. In Open Records Decision No. 563 (1990), the requestor sought documents showing the authority of a non-profit corporation to engage in various activities. We ruled as follows:

While couched as requests for documents, these are essentially requests for federal and state laws and regulations governing the activities of the corporation and for a statement of the corporation's interpretation of these provisions. The Open Records Act does not require a governmental body to perform legal research for a requestor nor to answer general questions.

*Id.* at 8. Requests numbered 1 through 3, 7 through 10, 12, 16 through 18, 20 and 21 are analogous to the request we dealt with in Open Records Decision No. 563 (1990) and we thus

conclude that the county attorney is not required to respond to these categories of the request. We note, however, that although a governmental body is not required to conduct research to respond to questions, we do not believe that reviewing county attorney files to determine if specific information exists may be considered "research" that is not required by the act. *Compare e.g.* Open Records Decision No. 563 (1990) at 8 (request seeking "documents showing the authority" of governmental body to engage in certain activities is request for research and governmental body not required to respond). A governmental body may not refuse to comply with an open records request merely because it would be difficult to do so. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, assuming the information exists, the county attorney may not withhold information responsive to requests numbered 4, 11 and 19 on the basis that legal research is required to secure the information. In addition, requests numbered 5, 6 and 13 through 15, copies of which you have submitted to this office, must be released.

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,

*Open Records Division*  
*Office of the Attorney General*

MAP/ch

Ref.: ID# 104491

Enclosures: Submitted documents

cc: Mr. Stanley A. Cohen  
H.E.L.P.  
P.O. Box 19798  
Houston, Texas 77224  
(w/o enclosures)

