



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 9, 1997

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

OR97-1320

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# 106195.

The Harris County Attorney's Office (the "county attorney") received a request from H.E.L.P. - Texas (advocates for Honest, Ethical, Legal Practice - Texas) for information stemming from a traffic stop. You assert 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. You also argue that you do not have documents responsive to one of the requested item numbers. Finally, you assert that the remainder of the requested records may be withheld under Government Code sections 552.101, 552.103, and 552.108.

Initially, you assert that no documents exist which are responsive to request items 7 and 7.1. The Open Records Act does not require a governmental body to make available information which does not exist. Open Records Decision No. 362 (1983); *see also* Open Records Decision No. 476 (1987) (a document is not within the purview of the Act if, when a governmental body receives a request for it, the document does not exist). Thus, you need not respond to request items 7 and 7.1.

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 v. Kirk*, 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 v. Kirk*, 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 Act from making an inquiry of the requestor concerning the use to be made of requested information. Gov’t 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 the request would require the county attorney to perform legal research and that the county attorney is, therefore, not obligated to respond to the request. 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. Request items 1, 1.1, 2, 2.1, 3, and 3.1 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 requests since legal research is required to secure the information.

You next contend that the information responsive to items 4, 4.1, 8, and 8.1 is excepted from disclosure by section 552.108.¹ 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*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report or an arrest report is generally considered public.² *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records

¹To the extent that request item 8 seeks a probable cause affidavit in support of a warrant, itself, and one exists, this affidavit is public under article 18.01(b) of the Code of Criminal Procedure if it was executed.

²The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

Decision No. 127 (1976). The requested information relates to the detection, investigation, or prosecution of crime. We therefore conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the requested information from required public disclosure.³ You may choose to release all or part of the requested information that is not otherwise confidential by law. Gov't Code § 552.007.

Lastly, you submit Exhibit C as responsive to request items 5, 5.1, 6, 6.1, 9, and 9.1. As we discussed above, you may not withhold the information in Exhibit C under *Morales v. Kirk*. You do not assert any other exceptions to withhold this information; thus, this information is presumed to be public information. Gov't Code §§ 552.301, .302.

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

Ref.: ID# 106195

cc: Mr. Harold Wayne White
Law Enforcement Oversight Committee
H.E.L.P.-Texas
P.O. Box 19798
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(w/o enclosures)

³Section 552.103(a) does not except front page offense report information from public disclosure. See Open Records Decision No. 362 (1983).

