



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 18, 1998

Mr. Michael Pichinson
Assistant County Attorney
The County of Liberty
P.O. Box 9127
Liberty, Texas 77575-9127

OR98-2751

Dear Mr. Pichinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119605.

The County of Liberty (the "County") received a request for information regarding County cooperation with INS enforcement activities. You contend that the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code. You also state that some of the requested records are not in the possession of the County sheriff but are maintained by Corrections Corporations of America ("CCA"); you contend that the County is exempt from disclosing these documents.

We first address your contention that the County has no obligation to produce documents maintained by CCA. Section 552.002 of the Government Code states in relevant part (emphasis added):

(a) In this chapter "public information" means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it

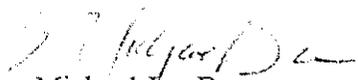
Our offices have recognized that where a governmental body does not have a right of access to or ownership of information, that information is not subject to the Open Records Act. Open Records Decision 558 (1990). Thus, the determining issue is the County's right to access to the records; the actual physical location of the requested records is irrelevant.

If the records are maintained for the County, and the County has a right of access to the records, they must be released on request, absent an applicable exception enumerated in Chapter 552 of the Government Code. If the County has no right of access it has no obligation to produce the records.

We now turn to County actions required when seeking to withhold requested public information. Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Pursuant to section 552.303(c) of the Government Code, this office notified the County by facsimile dated September 9, 1998, that you had failed to submit the information required by section 552.301(b), specifically a copy of the requested information. We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was public. *See* Open Records Decision No. 497 (1988) (fact that submitting copies for review to Attorney General may be burdensome does not relieve a governmental body of the responsibility of doing so). As of the date of this letter, you have not provided our office with the information that was requested. Therefore, as provided by section 552.303(e), the information that is the subject of this request is presumed to be public. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information in your possession to the requestor.¹ Open Records Decision No. 195 (1978). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

¹We note that the County Attorney is not the custodian of records for all county offices. *See* Govt Code § 552.201(b).

Ref: ID# 119605

cc: Mr. Hussein Sadruddin
Lawyer's Committee for Civil Rights
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