



July 13, 1999

Mr. David A. Castillo
Assistant District Attorney
Coryell County
District Attorney
P.O. Box 919
Gatesville, Texas 76528-0919

OR99-1935

Dear Mr. Castillo:

You ask whether certain information is subject to required public disclosure under the, Texas Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 126208.

The Office of the Coryell County District Attorney (the "district attorney") received a request for various information concerning the district attorney himself, Mr. Riley J. Simpson, including his biographical data, a list of all cases Mr. Simpson has handled and Mr. Simpson's financial records. The requestor also seeks the district attorney's records on a certain assault case, the district attorney's policy and procedure manuals and records of the district attorney's office expenditures and budget. The district attorney has apparently released to the requestor a list of its current employees and a memorandum from Mr. Simpson to all of the district attorney's employees. You have informed the requestor that the district attorney does not maintain a record of the win/lose status of Mr. Simpson's cases or a policy and procedure manual. You have referred the requestor to the Coryell County Auditor for records of the district attorney's expenditures and budgets. You assert that portions of the requested information are excepted from required public disclosure based on sections 552.102, 552.103, 552.108, 552.111 and 552.117 of the Government Code.

You raise section 552.108 for the district attorney's case files. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the requested information pertains to a pending case. We, therefore, believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime."
Id.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). However, in this case, the basic information includes information that is protected from public disclosure based on Government Code section 552.101 and the common-law right to privacy. *See* Open Records Decision Nos. 393 (1983), 339 (1982). We have marked the private information. Thus, with the exception of the basic front page offense and arrest information and the private information, you may withhold the requested information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007

You raise section 552.111 for information responsive to the request for instructions to the staff of the district attorney concerning the assault case. However, as we have already determined that the information is excepted from disclosure based on section 552.108a(1), we need not address your section 552.111 claim.

You raise sections 552.102 and 552.117 of the Government Code for Mr. Simpson's personnel records, including his personal financial records and the relationship of district attorney employees to Mr. Simpson. However, you state that "this office does not maintain or have in its control" the responsive information. We do not understand how the district attorney cannot be in control of the personnel records of its employees. The physical location of information is not dispositive of whether information is subject to disclosure. *See* Open Records Decision No. 492 (1988). 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. Gov't Code § 552.002. For purposes of this provision, we believe the district attorney's personnel records are information collected, assembled, or maintained in connection with the transaction of the district attorney's official business. As you have not submitted any information for which you claim sections 552.101 and 552.117, we cannot address the applicability of these exceptions. We caution that the Act prohibits the release of confidential information. Gov't Code § 552.353.

Finally, we consider your claim that a list of all cases handled by Mr. Simpson prior to his taking office are excepted from disclosure under section 552.107 because of Mr. Simpson's duty to his clients under the rules of the State Bar of Texas. Section 552.107(1) of the Government Code states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client

under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

This exception applies to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). You have not stated that the district attorney's office possesses information about the cases Mr. Simpson handled before becoming district attorney. In any case, you have not submitted information to this office so that we can determine the applicability of section 552.107(1).

You also state that all cases handled by Mr. Simpson after having taken office are public information and available through the district clerk's office of the 52nd judicial district court. Despite the availability of responsive information in the district clerk's office, the Act requires the district attorney to make a good faith effort to relate the request for information about the cases handled by Mr. Simpson to information which it holds and to release that information to the requestor. *See* Open Records Decision No. 561 (1990). The same can be said for the budget and expenditure information for which the district attorney referred the requestor to the County Auditor. The Act requires the district attorney to release all information in its possession that is responsive to the request for district attorney's budgets and other information concerning the district attorney's expenditures.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/eaf

Ref.: ID# 126208

Encl. Submitted documents

cc: Mr. Mark S. Sandefur
P.O. Box 201093
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(w/o enclosures)