



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2008

Mr. David Gonzales
Assistant District Attorney
Cameron County Courthouse
974 East Harrison Street
Brownsville, Texas 78520

OR2008-02307

Dear Mr. Gonzales:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 302784.

The Cameron County District Attorney (the "district attorney") received two requests for five categories of information pertaining to special prosecutors.¹ You claim that the requested information is not subject to the Act. We have reviewed the information you submitted. We have also considered comments submitted by the one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you assert that the requests require the district attorney to create new information or do legal research. We note that the Act does not require a governmental body to conduct legal research or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require that a governmental body make a good faith effort to relate a request to information that it has or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). As you have identified and submitted documents that contain the information the requestors seek, we will determine whether you must release this information to the requestor.

¹You inform us that the district attorney received clarification from the requestors. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

Next, you assert that some of the submitted documents are records of the judiciary, which are not subject to the Act. The Act generally requires the disclosure of information maintained by a "governmental body," but the judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). You state that documents responsive to two of the categories are collected, assembled, or maintained for the judiciary. However, you have not explained how this information, which consists of documents assigning cases to special prosecutors and billing statements from the special prosecutors to the district attorney, is maintained on behalf of the judiciary. *See id.* § 552.301(e)(1)(A) (providing that it is governmental body's burden to establish applicability of claimed exception or otherwise explain why requested information should not be released). *But see* Open Records Decision No. 646 at 5 (1996) (a community supervision and corrections department holds probationers' records, indicating whether probationers are complying with terms of probation, as an agent of the judiciary). Therefore, you have failed to demonstrate that this information is maintained by the district attorney on behalf of the judiciary and, consequently, we find that the submitted information is subject to the Act. *See generally* Open Records Decision No. 513 (1988) (stating that information collected or prepared by a district attorney that is submitted to the grand jury does not necessarily mean that such information is in grand jury's constructive possession when the same information is also held by a district attorney for his own purposes). As you raise no further arguments against disclosure, the submitted information must be released to the requestors.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office under the Act.

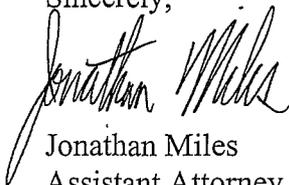
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/mcf

Ref: ID# 302784

Enc. Submitted documents

c: Mr. Jose Borjon
Reporter
The Brownsville Herald
1135 East Van Buren Street
Brownsville, Texas 78520
(w/o enclosures)

Mr. Peter M. Zavaletta
603 East St. Charles Street
Brownsville, Texas 78520
(w/o enclosures)