



The Attorney General of Texas

October 13, 1983

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Honorable Grant Jones
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Corpus Christi, Texas 78401

Open Records Decision No. 398

Re: Whether audit report prepared by grand jury is excepted from disclosure under section 3(a)(1) of the Open Records Act

Dear Mr. Jones:

You have requested a decision under the Open Records Act, article 6252-17a, V.T.C.S. The facts are as follows. The Nueces County Commissioners Court established a special fund, known as the Nueces County Task Force Imprest Fund, to be used by the sheriff's office in investigating narcotics cases. Some time ago, allegations were made that this fund had been used illegally. Two attorneys from this office were assigned as special prosecutors to investigate these allegations. One of the conditions precedent to their intervention was that Nueces County would agree to fund an audit by an outside auditor of this office's choice.

The private auditor who was selected appeared before the Nueces County grand jury, which directed him to audit the Imprest Fund. After he concluded the audit, the auditor prepared a report and submitted it to the grand jury. He augmented this report with testimony concerning the specific accounts under investigation.

Following its investigation, the grand jury no-billed the cases that had been brought before it. We are advised that two other cases are currently under investigation. Copies of the audit report are now located in an evidence locker in the office of the district attorney of Nueces County. The grand jury directed that this report not be made public. You have asked whether you must comply with a request from a member of the news media to obtain a copy of this audit report.

Section 3(a) of the act provides:

All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information . . . with the following exceptions . . .

Section 6 provides:

Without limiting the meaning of other sections of this Act, the following categories of information are specifically made public information:

(1) audits . . . and investigations made of, for, or by, governmental bodies upon completion.

The first question is whether this audit report is within the ambit of the Open Records Act. Our review of applicable constitutional provisions and statutes, see, e.g., Tex. Const. art. V, §13; art. V, §17; Code Crim. Proc. Chapters 19 and 20, convinces us that, for purposes of the Open Records Act, the grand jury must be treated as part of the judiciary, which is not subject to the Open Records Act. V.T.C.S. art. 6252-17a, §2(G).

The grand jury is an inquisitorial body that has no personnel or facilities of its own and no independent authority to commit the general funds of the county. See Attorney General Opinions H-439 (1974); WW-1086 (1961). It is the duty of the grand jury to "inquire into all offenses liable to indictment of which any member may have knowledge, or of which they shall be informed by the attorney representing the State, or any other credible person." Code Crim. Proc. art. 20.09. The attorney general may appear before the grand jury as attorney for the state in addition to the county or district attorney. See Code Crim. Proc. art. 20.03. Generally, services are rendered and investigations are made for the grand jury by state and county officials who have available funds. See Code Crim. Proc. art. 20.01; V.T.C.S. arts. 2292f, 2292g; Attorney General Opinion H-1009 (1977); 8 Baylor L.Rev. 194 (1956). In many ways, the attorney representing the state is the servant of the grand jury. He may "go before the grand jury and inform them of offenses liable to indictment at any time except when they are discussing the propriety of finding an indictment or voting upon the same." V.T.C.S. art. 20.03.

To further assist grand juries in criminal investigations, the commissioners courts and attorneys representing the state may secure, and compensate from county funds, accountants and other experts to inspect and review evidence and appear as witnesses before the grand juries. See Rodgers v. County of Taylor, 368 S.W.2d 794 (Tex. Civ. App. - Eastland 1963, writ ref'd n.r.e.); Attorney General Opinions M-823 (1971); WW-1086 (1961). Such witnesses may be required to leave with the grand juries the physical evidence that was produced, and the attorney for the state may take custody of such evidence for the grand jury. See Taylor v. State, 221 S.W. 611, 614 (Tex. Crim. App. 1919); Marston's, Inc. v. Strand, 560 P.2d 778, 783 (Ariz. 1977); In Re Temporary State Commission of Investigation, 261 N.Y.S.2d 916 (Nassau Co. Ct. 1965).

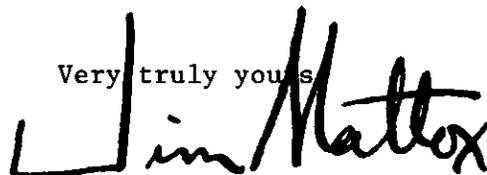
The audit report concerning the Imprest Fund is part of the testimony and evidence presented to the grand jury. It remains in the possession of the grand jury even though it physically is held by officials who serve the grand jury as custodians of grand jury files and records. As we already stated, the grand jury is not subject to the Open Records Act. The report in the possession of the grand jury is not public information.

Your specific question, however, is whether the audit report of the Imprest Fund prepared under the direction of the grand jury by a witness sworn to secrecy and presented to it as part of the testimony before the grand jury is excepted from disclosure under section 3(a)(1) of the Open Records Act. That section excepts from disclosure information that otherwise is public under the Open Records Act if the information is deemed confidential by law, either constitutional, statutory, or by judicial decision.

Accordingly, the audit report in question is not information that must be made public irrespective of whether grand juries are subject to the Open Records Act. Under Texas law, grand jury proceedings, including evidence and testimony of witnesses, are required to be kept secret, except that matters that occur in the jury room may be given in evidence in a judicial proceeding when, in the judgment of the court, it becomes necessary for the attainment of justice that disclosure be allowed. When permitted, the testimony is limited to the subject matter under inquiry and may not include other matters that occurred in the jury room. See Code Crim. Proc. arts. 19.34, 20.02, 20.16; Johnson v. State, 503 S.W.2d 280, 283 (Tex. Crim. App. 1973); Garcia v. State, 454 S.W.2d 400, 403 (Tex. Crim. App. 1970); Bryant v. State, 423 S.W.2d 320, 321 (Tex. Crim. App. 1968); Quarles v. State, 385 S.W.2d 395 (Tex. Crim. App. 1964); Barnes v. State, 116 S.W.2d 408 (Tex. Crim. App. 1938); Pozil v. State, 283 S.W. 846 (Tex. Crim. App. 1925); Biscoe v. State, 216 S.W. 174 (Tex. Crim. App. 1919); Christian v. State, 51 S.W. 903 (Tex. Crim. App. 1899); Hines v. State, 39 S.W. 935 (Tex. Crim. App. 1897); Jacobs v. State, 34 S.W. 110, 111 (Tex. Crim. App. 1896); 7 St. Mary's L.J. 374 (1975); 8 Baylor L.Rev. 194 (1956).

We conclude that the requested audit report is not within the purview of the Open Records Act. Under the Texas law providing for secrecy of grand jury proceedings, the audit report of the Imprest Fund is not public information unless it is needed in a judicial proceeding to accomplish justice.

Very truly yours



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