



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1995

Mr. Tom O'Connell
Criminal District Attorney
Collin County
210 S. McDonald, Suite 324
McKinney, Texas 75069

OR95-293

Dear Mr. O'Connell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 30908.

The Collin County Criminal District Attorney's Office (the "criminal district attorney") has received a request for information relating to the grand jury in the case styled *State v. Holloway*. Specifically, the requestor seeks the following information:

1. Names of all people who testified before the Grand Jury regarding this case.
2. Names of all members of the Grand Jury.
3. The tally of the Vote of the Grand Jury.

You object only to releasing the names of the witnesses called by the grand jury. You claim that this information constitutes a record of the judiciary and is therefore not subject to the Open Records Act. See Gov't Code § 552.003(b) (excluding judiciary from Open Records Act). In the alternative, you claim that sections 552.101 and 552.108 of the Government Code except the names of the witnesses from required public disclosure. As you do not comment on the other information requested, we presume that it has been or will be made available to the requestor. See Open Records Decision No. 363 (1983).

Section 552.003(b) of the Government Code excludes the judiciary from the Open Records Act. *See Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ) (discussing purposes and limits of § 552.003(b)). In Open Records Decision No. 513 (1988), this office concluded that grand jury records and records held by a district attorney on behalf of a grand jury are in the grand jury's constructive possession and are not subject to the Open Records Act. *See also* Open Records Decision No. 411 (1984) (concluding that names of individuals subpoenaed by grand jury are in constructive possession of grand jury and are thus records of the judiciary).

You indicate that the witnesses at issue here were subpoenaed at the direction of the grand jury. We conclude that in this instance the requested witness names are in the constructive possession of the grand jury and thus need not be disclosed under the Open Records Act. As the information at issue here is not subject to the Open Records Act, we need not address the applicability of sections 552.101 and 552.108 at this time.

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 under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 30908

Enclosures: Submitted documents

cc: Ms. Rose Roberts Cannaday
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(w/o enclosures)