



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1996

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR96-1288

Dear Mr. Durfee:

Your predecessor has asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 25953.

The Harris County District Attorney (the "district attorney") received a request for the "'packet' of documents provided to Assistant District Attorney Larry Standley on or about March 18, 1994, from, or on behalf of Stuart Bryson Collins and submitted to the 338th District Court Grand Jury." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Article 20.02 of the Code of Criminal Procedure makes confidential information revealing the substance of grand jury deliberations.¹ Further, this office has concluded that the grand jury is an extension of the

¹We note that article 20.02 was amended in the last legislative session and now provides that grand jury *proceedings* are confidential. Act of May 24, 1995, 74th Leg., R.S., ch. 1011, § 2, 1995 Tex. Sess. Law Serv. 5066 (Vernon). However, the act applies only to grand jury proceedings occurring on or after September 1, 1995, the effective date of the act. *Id.* §§ 3, 4, 1995 Tex. Sess. Law Serv. at 5067. Therefore, as the grand jury proceeding at issue here occurred before the effective date of the act, we apply

judiciary for purposes of the Open Records Act. Open Records Decision Nos. 433 (1986), 411 (1984). Information held by a grand jury, therefore, is not itself subject to the Open Records Act. When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information held or collected by the agent is within the grand jury's constructive possession. Open Records Decision No. 513 (1988). It appears that the district attorney is holding these documents as the agent for the grand jury. Therefore, the district attorney may withhold the requested information under section 552.101 of the Government Code.

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,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 25953

Enclosures: Submitted documents

cc: Mr. Randy L. Cunningham
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(w/o enclosures)

(Footnote continued)

the old law. We do not address in this ruling what effect the amendment may have on subsequent requests for similar information.