



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 31, 1996

Ms. Karen S. Barland  
Central Records Supervisor  
Office of the District Attorney  
P.O. Box 1748  
Austin, Texas 78767

OR96-2006

Dear Ms. Barland:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 101487.

The Travis County District Attorney (the "district attorney") received an open records request for the district and county attorneys' files regarding "Insurance General Management Corporation; Kenneth R. Burroughs and Mark E. Burroughs." You have submitted to this office as responsive to the request a representative sample of the records at issue.<sup>1</sup> You state that the County Attorney's Office has informed the requestor that it does not possess any responsive documents. You have also informed us that the district attorney will make available to the requestor "any court records expressly made public under Section 552.022(17) of the Government Code" as well as all "front page offense report information" in accordance with *Houston Chronicle Publishing Company 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).<sup>2</sup>

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>You contend, however, that to the extent that the file contains a compilation of offense reports which, if taken together, would constitute criminal history information, such information must be withheld from the public pursuant to *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989). Our review of the records submitted to this office, however, did not appear to contain any such compilation.

The district attorney seeks to withhold, however, all remaining documents, either pursuant to section 552.108 of the Government Code or as records in the constructive or actual possession of the Travis County Grand Jury. An affidavit you submitted to this office declares that the district attorney has withheld the following records from the requestor as judicial records:

- 1) grand jury subpoenas;
- 2) all information acquired pursuant to the grand jury subpoenas;
- 3) information prepared or collected at the express direction of the grand jury; and
- 4) all other information within the grand jury's actual or constructive possession.

This office has previously held that where a district attorney, acting as an agent of the grand jury, gathers information pursuant to a subpoena, the information is deemed to be in the constructive possession of the grand jury despite the fact that the information is in the actual possession of the district attorney. Open Records Decision No. 411 (1984). Assuming that the district attorney did not possess a copy of the records at issue prior to the issuance of the subpoenas, *see* Open Records Decision No. 513 (1988), we conclude that the materials listed above are in the constructive possession of the Travis County Grand Jury. Because section 552.003(b) of the Government Code specifically excludes the judiciary, of which the grand jury is a part, from the provisions of the Open Records Act, the above listed materials are not subject to the provisions of the Open Records Act and therefore need not be disclosed.<sup>3</sup>

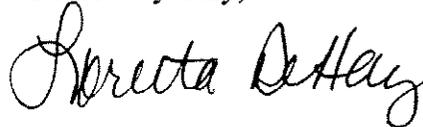
You seek to withhold all of the remaining records at issue pursuant to section 552.108, which excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Because the records at issue come within the purview of section 552.108, we conclude that the information may be withheld under this section. You may choose, however, to release all or part of the information protected by section 552.108 that is not otherwise made confidential by law. *See* Gov’t Code § 552.007.

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<sup>3</sup>It is not clear to this office whether any of the materials you submitted to us in connection with this request consist of grand jury materials. We particularly note that among the records submitted to this office are filings, final orders, and transcripts of public court and administrative proceedings made public under section 552.022(17). Also contained in the submitted materials are copies of articles of incorporation filed with the Office of the Secretary of State. These records of public proceedings may be withheld only if the district attorney obtained them pursuant to a grand jury subpoena. *See* Open Records Decision No. 287 (1981) at 2 (“law enforcement” exception not intended to shield from public view information that would ordinarily be available to public if possessed by different governmental unit).

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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/RWP/rho

Ref.: ID# 101487

Enclosures: Submitted documents

cc: Mr. Bradley S. Fishman  
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(w/o enclosures)