



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 26, 1998

Ms. Roxann Pais
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
Municipal Building
Dallas, Texas 75201

OR98-0250

Dear Ms. Pais:

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# 112314.

The Dallas Police Department (the "department") received an open records request for "files and materials concerning a criminal investigation of Judge Franklin Roark, III's bank accounts." You contend the requested information is not subject to the provisions of the Open Records Act because the records constitute records of the judiciary. You also contend that the records are excepted from public disclosure pursuant to section 552.108 of the Government Code.

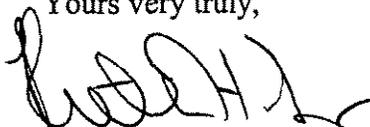
This office has previously held that where a district attorney, acting as an agent of the grand jury, gathers information pursuant to a subpoena, the information is deemed to be in the constructive possession of the grand jury despite the fact that the information is in the actual possession of the district attorney. Open Records Decision No. 411 (1984). 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. Assuming the records are still within the constructive possession of the grand jury, we conclude that to the extent that the request encompasses documents subpoenaed by the grand jury, they are not subject to the provisions of the Open Records Act.

It is not clear to this office, however, whether the department holds any additional responsive records that were not gathered pursuant to a grand jury subpoena. If there are any such records, we conclude that the department must release those records in their entirety because you have not argued or otherwise demonstrated that any of the subsections of section

552.108 of the Government Code apply in this instance. See Attorney General Opinion H-436 (1974) (custodian of records has burden of proving that records are excepted from public disclosure).

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref: ID# 112314

cc: Mr. Joe B. Abbey
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Dallas, Texas 75201