



March 14, 2000

Mr. Thomas Keever
Assistant District Attorney
County of Denton
P.O. Box 2850
Denton, Texas 76202

OR2000-1018

Dear Mr. Keever:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 132928.

Denton County (the "county") received a request for evidence presented to the grand jury in a specified case and all documents supporting, and reasons for, the grand jury's "no bill." You assert that the requested documents are not subject to the act as records of the judiciary. You also claim that the requested information is excepted from disclosure under section 552.108 of the Government Code and section 552.101 in conjunction with article 20.02 of the Code of Criminal Procedure. We have considered the exceptions you claim.

You have not submitted any documents or representative samples thereof to this office to review. However, the request itself suggests that information responsive to the request may be records of the grand jury. The grand jury is an extension of the judiciary for purposes of the act. Open Records Decision Nos. 513 (1988), 433 (1986), 411 (1984), 403, 398 (1983). The records of the judiciary are not subject to the act. *See* Gov't Code § 552.003(B). The act does not apply to information within the actual or constructive possession of the grand jury. Open Records Decision No. 513 at 3 (1988). 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. *Id.* Thus, information in a district attorney's actual possession may be in a grand jury's constructive possession if the information was prepared at the grand jury's direction. Such records are records of the judiciary, and, thus, are not subject to the act.

However, the fact that information a district attorney collected or prepared was submitted to a grand jury, taken alone, does not mean that the information is in the grand jury's

constructive possession. *Id.* at 4. Open Records Decision No. 513 (1988) held that information that is neither created, subpoenaed, nor held by a grand jury, but rather that is merely introduced as evidence during grand jury proceedings, is not within the constructive possession of the grand jury and thus not exempt from the act as records of the judiciary. As noted, you have not submitted any documents for our review, nor have you explained whether responsive documents are in the actual or constructive possession of the grand jury. Open Records Decision No. 513 at 4-5 (1988) provides that, while a district attorney need not submit copies of information obtained pursuant to a grand jury subpoena or information collected at the direction of the grand jury, the governmental body should submit an affidavit stating that the requested information was prepared or collected at the express direction of the grand jury. As you have not stated that the information was obtained pursuant to grand jury subpoena or collected at the grand jury's direction, we cannot conclude that the information is within the grand jury's possession and therefore exempt from the act as a record of the judiciary.

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(a) of the Code of Criminal Procedure states that "[t]he proceedings of the grand jury shall be secret." Thus, with regard to information that is not within the grand jury's actual or constructive possession, the information is protected from required public disclosure by section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure, to the extent that the information reveals the proceedings of the grand jury. *See id.* at 4. However, this office must examine any records that are subject to the act in order to determine whether such information comes under the protection of the raised exceptions to disclosure.

In summary, we cannot determine whether the responsive information is a record of the judiciary so as to be exempt from the act. Furthermore, we cannot determine whether the responsive information reveals the proceedings of the grand jury so as to be confidential under article 20.02(a) of the Code of Criminal Procedure in conjunction with section 552.101. If any responsive information is not in the possession of the grand jury, and if that information does not reveal the proceedings of the grand jury and is not otherwise confidential, the county must release that information. We caution you that the distribution of confidential information may constitute a criminal offense. *See Gov't Code* § 552.352.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

¹Because you did not submit documents for this office to review, and because your brief and copy of the request were not timely submitted according to the requirements of section 552.301(e), you have waived your section 552.108(a)(2) argument.

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 132928

Encl. Submitted documents

cc: Sawko & Burroughs
1100 Dallas, Drive
Denton, Texas 76201
(w/o enclosures)