



August 9, 2000

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR2000-3022

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139555.

The Dallas County District Attorney's Office (the "district attorney") received a request for a letter submitted to the grand jury relating to a particular individual. You claim that requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 20.02 of the Code of Criminal Procedure. We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. This office has concluded that grand juries are not governmental bodies subject to chapter 552 of the Government Code, so that records within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to chapter 552. Open Records Decision No. 513 at 3 (1988). Information that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* You state that the information is contained within the grand jury records. To the extent that this information is in the custody of the district attorney as agent for the grand jury, we conclude that it is in the constructive possession of the grand jury and is therefore not subject to disclosure under chapter 552 of the Government Code.

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 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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 139555

Encl. Submitted documents

cc: Ms. Margaret Alvis
7111 Marvin D. Love Freeway, #210
Dallas, Texas 75237
(w/o enclosures)