OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

July 31, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-3312

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150074.

The Texas Department of Public Safety (the "department") received a request for various documents related to the department's investigation of a specified person, as well as all documents turned over to the Corpus Christi District Attorney's Office for consideration. You state that you will release some of the responsive information. You claim, however, that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with Article 20.02 of the Code of Criminal Procedure.[1] Article 20.02(a) of the Code of Criminal Procedure provides that "[t]he proceedings of the grand jury shall be secret." Additionally, this office has concluded that grand juries are not subject to the Public Information Act (the "Act") and that records within the constructive possession of grand juries are not public information subject to disclosure under the Act. *See* Gov't Code § 552.003; *see also* Open Records Decision No. 513 (1988).

[1] Section 552.101 of the Government Code excepts information from disclosure "if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes.

You state that the submitted records in Exhibit A were obtained through the use of a grand jury subpoena. We understand you to assert that the submitted information is in the constructive possession of the grand jury because the department holds the information as an agent of the grand jury. *See* Gov't Code §§ 552.003(B), .0035(a); *see also* Open Records Decision No. 398 at 2 (1983) (grand jury is part of judiciary for purposes of the Act). Based on these representations, we conclude that the submitted information is not subject to disclosure under the Act.

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).

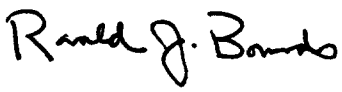
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 150074

Enc. Submitted documents

cc: Ms. Vanessa Santos
Corpus Christi Caller-Times
P.O. Box 9136
Corpus Christi, Texas 78469
(w/o enclosures)