



September 11, 2001

Mr. Jeffrey L. Schrader
Assistant Criminal District Attorney
Bexar County District Attorney's Office
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2001-4043

Dear Mr. Schrader:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151748.

The Bexar County District Attorney's Office (the "district attorney") received a request for all information in the district attorney's case files for two specific cases of indecency with a child, including dictation pages, documents pertaining to grand jury presentment, documents pertaining to the grand jury's decision to no bill the charges, documents reflecting the district attorney's decision to reject the charges, initial case reports, the case jacket front, and "the page 'B' print out from CJIS." You claim that portions of the requested information are not subject to the Public Information Act (the "Act"). You further claim that other portions of the requested information are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

We begin by addressing your argument that portions of the submitted information are not subject to the Act and therefore are not subject to required public disclosure. This office has concluded that the grand jury is an extension of the judiciary for purposes of the Act. Open Records Decision Nos. 433 (1986), 411 (1984). Therefore, information held by a grand jury is not itself subject to the Act. 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. Open Records Decision No. 513 (1988). Information obtained pursuant to a grand jury subpoena issued in connection with this investigation is within the grand jury's constructive possession. *Id.* at 4. You indicate that some of the information was "obtained pursuant to a grand jury subpoena." To the extent the responsive information was so obtained, it is not subject to the Act. See Gov't Code § 552.0035. Therefore, this decision does not address such information.

With respect to the remainder of the information, we note that portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(17) information that is also contained in a public court record

Gov't Code § 552.022(a)(1), (3), (17). Thus, the information falling under these categories of information must be released to the public unless it is confidential under other law or, in the case of the completed reports, if the information is also excepted from disclosure under section 552.108.

Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the submitted documents relate to an allegation of child abuse, the documents are within the scope of section 261.201 of the Family Code. You have not indicated that the district attorney has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted documents are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district attorney must withhold Exhibits B, C, E, and F in their entirety.

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).

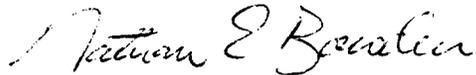
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 151748

Enc: Submitted documents

c: Ms. Lisa M. Tatum
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(w/o enclosures)