OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

November 29, 2001

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County Justice Center
401 West Belknap
Fort Worth, Texas 76196-0201

OR2001-5546

Dear Ms. Fourt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155428.

The Tarrant County District Attorney's Office (the "district attorney") received a request for information relating to three cause numbers. You assert that some of the requested information is not subject to chapter 552 of the Government Code. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.111. We have considered your arguments and have reviewed the information you submitted.

Initially, we address your assertion that the documents submitted as Exhibit E "were prepared and collected at the express direction of the grand jury" and thus are not subject to chapter 552 of the Government Code. This office has concluded that grand juries are not governmental bodies that are subject to chapter 552, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Gov't Code § 552.003(1)(B); Open Records Decision No. 513 (1988). When an individual or an 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. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is shown to be applicable. *Id.* You inform this office that "Exhibit E consists of information kept for the grand jury which investigated the charges." It appears to this office that the documents in Exhibit E were obtained pursuant to grand jury subpoenas. We therefore find that the information in Exhibit E is in the custody of the district attorney as agent of the grand jury and thus is not subject to disclosure under chapter 552 of the Government Code. *Id.* at 4.

Next, we address your claim under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. Section 261.201 of the Family Code provides in part:

> (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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that the rest of the submitted information comprises files, reports, records, communications, and working papers used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. You do not inform this office that the district attorney has adopted a rule that governs the release of this type of information. Accordingly, we assume that no such rule exists. Given that assumption, we conclude that this information is confidential in its entirety under section 261.201 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor). Therefore, the rest of the submitted information is excepted from disclosure under section 552.101 of the Government Code as information made confidential by law.

In summary, Exhibit E is not subject to disclosure under chapter 552 of the Government Code. The rest of the submitted information is confidential under section 261.201 of the Family Code and therefore excepted from disclosure under section 552.101 of the Government Code. As we are able to make these determinations, we need not address section 552.111.

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).

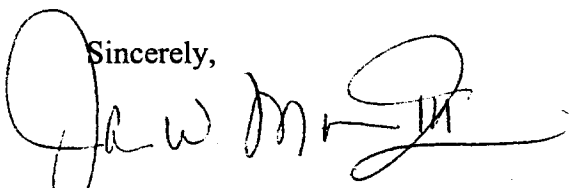
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 155428

Enc: Submitted documents

c: Mr. Derrell A. Coleman
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(w/o enclosures)