



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 18, 2003

Mr. Brian L. Rose  
Assistant General Counsel  
Office of the District Attorney  
1201 Franklin Street, Suite 600  
Houston, Texas 77002

OR2003-1045

Dear Mr. Rose:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176688.

The Harris County District Attorney's Office (the "district attorney") received a request for the following information pertaining to all Harris County Sheriff's Department Internal Affairs cases that were referred to or received by the district attorney: declination letters sent to other individuals or agencies and any "spreadsheet or list generated by [the district attorney] that categorizes or spells out the number of cases and final outcome of said cases." You state that you have released the requested declination letters. You assert, however, that the requested spreadsheet constitutes a record of the grand jury that is not subject to disclosure under the Public Information Act (the "Act"). In the alternative, you claim that the spreadsheet is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within their actual or constructive possession are not subject to disclosure under the Act. *See* Gov't Code §§ 552.003(1)(B), .0035(a); *see also* Open Records Decision No. 513 (1988); Open Records Decision No. 398 at 2 (1983) (grand jury is part of judiciary for purposes of the Act). Information is within the constructive possession of the grand jury only if such information was obtained pursuant to a grand jury subpoena or at the direction of a grand jury. Open Records Decision No. 513 at 3. Information that is not so obtained or created is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *Id.* You argue that the spreadsheet was created from information that was obtained pursuant to a grand jury

subpoena. You do not inform us, however, that the spreadsheet itself was obtained pursuant to a grand jury subpoena or at the grand jury's direction. We therefore conclude that the spreadsheet is not in the constructive possession of the grand jury and is subject to the Act.

Section 552.108 of the Government Code states in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

....

(c) This section does not except from [required public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You inform us that the spreadsheet was prepared by an attorney representing the state in anticipation of litigation and assert that it reveals the attorney's mental impressions and legal reasoning. Based on your representations and arguments and our review of the submitted information, we conclude that you have established the applicability of section 552.108(a)(4) to the submitted information, and it may be withheld on that basis. As our ruling on this issue is dispositive, we need not address your remaining arguments.

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).

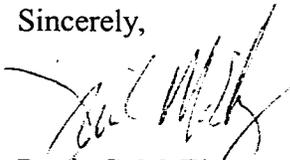
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 176688

Enc. Submitted documents

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(w/o enclosures)