



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 30, 2003

Ms. Sheri Bryce Dye  
Assistant Criminal District Attorney  
Bexar County  
300 Dolorosa, Fifth Floor  
San Antonio, Texas 78205-3030

OR2003-3649

Dear Ms. Dye:

The Bexar County District Attorney's Office (the "district attorney") received a request for a copy of all grand jury testimony in the possession of the district attorney regarding *The State of Texas vs. Melvyn Spillman*. You argue that, as records of the judiciary, the requested transcripts are not subject to the Public Information Act (the "Act"). We have considered your argument and reviewed the submitted information.

The Act provides that the judiciary is not a governmental body subject to the Act. Gov't Code §552.003(1)(B). This office has concluded that a grand jury is an extension of the judiciary for purposes of the Act. *See* Open Records Decision No. 513 at 3 (1988). Thus, records within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552.<sup>1</sup> *See id.* The transcript of the testimony of grand jury

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<sup>1</sup>Grand jury testimony is recorded pursuant to article 20.012 of the Code of Criminal Procedure. Release of such information is governed by article 20.02(c) of this code, which provides:

[a] disclosure of a record made under Article 20.012, a disclosure of a typewritten transcription of that record, or a disclosure otherwise prohibited by Subsection (b) or Article 20.16 may be made by the attorney representing the state in performing the attorney's duties to a grand juror serving on the grand jury before whom the record was made, another grand jury, a law enforcement agency, or a prosecuting attorney, as permitted by the attorney representing the state and determined by the attorney as necessary to assist the attorney in the performance of the attorney's duties. The attorney representing the state shall warn any person the attorney authorizes to receive information under this subsection of the person's

witnesses is part of the record of the grand jury proceeding. *See Stern v. State*, 869 S.W. 2d 614 at 621 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1994, writ denied); *see also* Open Records Decision No. 398 (1983). Thus, even though the transcript is physically held by the district attorney, it is in the grand jury's constructive possession. *See* Open Records Decision Nos. 513 (1988), 398 (1983). We therefore conclude that the responsive transcripts are not subject to the Act's disclosure requirements.

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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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duty to maintain the secrecy of the information. Any person who receives information under this subsection and discloses the information for purposes other than those permitted by this subsection is subject to punishment for contempt in the same manner as persons who violate Subsection (b).

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

File # 184321

Enc: Submitted documents

c: Mr. Robert J. Barrera  
424 East Nueva  
San Antonio, Texas 78205  
(w/o enclosures)