



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 27, 2003

Ms. Julie Joe
Assistant County Attorney
County of Travis
314 West 11th Street
Suite 420
Austin, Texas 78767

OR2003-4419

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183416.

The Travis County District Attorney's Office (the "D.A.'s Office") received a request for a list indicating telephone, fax numbers and e-mail addresses of various individuals working within the D.A.'s Office. You state that you have released some information to the requestor. You assert, however, the telephone number to the grand jury conference room 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 telephone number to the grand jury conference room is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We begin by considering your assertion that the telephone number of the grand jury conference room is not public information and therefore are not subject to disclosure under the Act. 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 D.A.'s office, as an agent of the grand jury, provides the conference room and telephone, and that the telephone number of the grand jury conference room is listed in the internal telephone directory of the D.A.'s office only by virtue of its acting as an agent of the grand jury. You do not inform us, however, that the telephone number of the grand jury conference room itself was obtained pursuant to a grand jury subpoena or at the grand jury's direction. *See* Open Records Decision No. 513 at 3. We therefore conclude that the telephone number of the grand jury conference room is not in the constructive possession of the grand jury and is thus subject to the Act.

Next, we consider you section 552.108 argument. Section 552.108 of the Government Code provides in pertinent part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). We note that a criminal district attorney's office is a "law enforcement agency" for purposes of section 552.108. Open Records Decision No. 369 (1983) (addressing criminal district attorney's office as "law enforcement agency" under statutory predecessor of section 552.108). We further note that, pursuant to article 20.09 of the Code of Criminal Procedure, "[a] grand jury shall inquire into all offenses liable to indictment of which any member may have knowledge, or of which they shall be informed by the attorney representing the State, or any other credible person."

This office has stated that certain procedural information may be withheld under section 552.108 of the Government Code, or its statutory predecessors. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). To claim this aspect of section 552.108 protection, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open

Records Decision No. 562 at 10 (1990). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses . . . and generally undermine . . . efforts to effectuate the laws of this State.” *City of Ft. Worth v. Cornyn*, 2002 WL 31026981 (Tex. App.—Austin, Sept. 12, 2002) (No. 03-02-00074-CV). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You state that “[w]e believe that the release of the grand jury conference room telephone number to the requestor or any member of the public would have a detrimental effect on the grand jury’s ability to conduct its business effectively and efficiently, without interference from outside parties.” You explain that “[i]f the public were to have access to this telephone number, it is likely that the grand jury’s deliberations may be interrupted by persons who wish to influence the decisions of the grand jury.” Finally, you assert that

“[f]rom time to time, the [D.A.’s Office] presents cases to a grand jury in the grand jury conference room. Release of the grand jury conference room telephone number to the public would interfere with the [D.A.’s Office’s] investigative and prosecutorial functions because unsolicited telephone calls to the grand jury room during the [D.A.’s Office’s] presentations to the grand jury would be both disruptive to both the functions of the [D.A.’s Office] as well as that of the grand jury.”

Based upon your representations and arguments and our review of the submitted information, we conclude that you have established how release of the telephone number of the grand jury conference room would interfere with law enforcement or prosecution, and thus, it may be withheld from the requestor under section 552.108(b)(1). *Cf.* Open Records Decision No. 506 (1988) (finding that cellular telephone numbers assigned to government officials and employees with specific law enforcement responsibilities are excepted from public disclosure under predecessor to section 552.108); *see also* Code Crim. Proc art. 20.02 (providing for secrecy of grand jury proceedings).

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 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. 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,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 183416

Enc. Submitted documents

c: Mr. John H. Marshall
Route 5, Box 133
Jacksonville, Texas 75766-9321
(w/o enclosures)