



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2003

Ms. Deborah F. Harrison
Assistant District Attorney
Collin County Criminal District Attorney's Office
210 South McDonald, Suite 324
McKinney, Texas 75069

OR2003-5982

Dear Ms. Harrison:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 186554.

The Collin County Criminal District Attorney (the "district attorney") received a request for information "regarding David Elliot Penton in the deaths of Christi Lynn Meeks, Christie Diane Proctor and Roxann Hope Reyes." You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.115, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the information at issue is not subject to the Act. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records 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). When an individual or 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. Open Records Decision No. 513 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 applicable. *Id.* However, "the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's

constructive possession when the same information is also held by the district attorney.” *Id.* Therefore, to the extent the requested documents are maintained by the district attorney for or on behalf of the grand jury, they are in the custody of the district attorney as agent of the grand jury and not subject to disclosure under the Act. To the extent that they are not so maintained, they are subject to the Act and may be withheld only if an exception under the Act is shown to apply. As we are unable to determine the extent to which these documents are maintained for or on behalf of the grand jury, we will also address the exceptions that you claim under the Act for these documents.

We also note that the submitted information includes court documents. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov’t Code §552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Pursuant to section 552.022(a)(17), documents filed with a court must be released, except to the extent that they are confidential under other law. You claim that the court documents are confidential by statute. Thus, we will consider the applicability of section 552.101 to all of the submitted information, including the court documents.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You claim that the submitted information is confidential under section 261.201 of the Family Code. Section 261.201 reads in part 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We find that the submitted information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the district attorney has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the submitted information is confidential under section 261.201 of the Family

Code and must be withheld from disclosure under section 552.101 of the Government Code.¹ See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

In summary, information maintained by the district attorney for or on behalf of the grand jury is not subject to disclosure under the Act. The submitted information, including court documents, is confidential under section 261.201 of the Family Code and must be withheld.

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).

¹Because we are able to resolve your request under section 261.201 of the Family Code, we need not address the other exceptions you raise.

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 "Karen Hattaway".

Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 186554

Enc: Submitted documents

c: Mr. Charlie Castillo
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(w/o enclosures)