



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2004

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County Criminal District Attorney's Office
401 West Belknap
Fort Worth, Texas 76196-0201

OR2004-0972

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# 195639.

The Tarrant County District Attorney's Office (the "district attorney") received two requests from the same requestor for (1) a "report filed, copy of interview, [and] all records that pertain to alleged statements made by [a named individual] made against [two other named individuals]" during a specified time interval and (2) "copies of reports and interviews made by the Parker County and the Tarrant County District Attorney [sic] office regarding [two named individuals]." You contend that the requested information is not subject to the Public Information Act (the "Act"), chapter 552 of the Government Code. You also claim that this information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Act. We have considered your arguments and have reviewed the information you submitted.¹

You assert that the requested information was gathered on behalf of a grand jury in connection with a criminal investigation and thus is not subject to the Act. Article 20.02(a) of the Code of Criminal Procedure provides that "[t]he proceedings of the grand jury shall be secret." This office has concluded that grand juries are not subject to the Act and that records that are within the constructive possession of grand juries are not public information that is subject to disclosure under the Act. *See* Gov't Code § 552.003; *see also* Open

¹We note that some of the audiotaped information does not appear to be responsive to this request for information. This decision does not address the public availability of any information that is not responsive to this request, and the district attorney need not release that information.

Records Decision No. 513 at 3 (1988). We note, however, that if an investigation began before any information was submitted to the grand jury and the grand jury did not formally request or direct all of the governmental body's actions in the investigation, then the information relating to the investigation is not deemed to be in the grand jury's constructive possession. The fact that information collected or prepared by a governmental body is submitted to a 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 governmental body. *See* Open Records Decision No. 513 at 3-4 (1988).

In this instance, you state that the requested information "was compiled as a result of [a] Grand Jury investigation into alleged criminal actions allegedly committed by [two named individuals]." You also state that "[t]hese records [were] prepared and collected at the express direction of the grand jury." We therefore understand you to assert that the information to which the requestor seeks access is in the constructive possession of the grand jury because the district attorney holds this information as an agent of the grand jury. *See* Gov't Code §§ 552.003(B), .0035(a); *see also* Open Records Decision No. 398 at 2 (1983) (grand jury is part of judiciary for purposes of the Act). Based on your representations, we conclude that the requested information is not subject to disclosure under the Act. As we are able to make this determination, we need not address your other arguments against disclosure.

You also ask this office to issue a previous determination that would permit the district attorney to withhold the type of information that is the subject of this request for information without the necessity of again requesting an attorney general decision. We decline to do so. 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

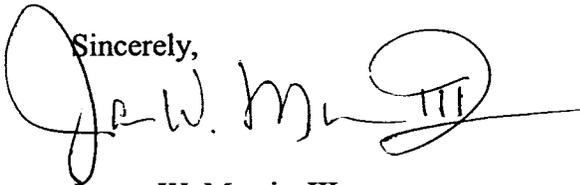
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 black ink, appearing to read "J.W. Morris III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

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

JWM/sdk

Ref: ID# 195639

Enc: Submitted documents

c: Ms. Barbara M. Webster
226 Bent Oak Road
Weatherford, Texas 76086
(w/o enclosures)