



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2004

Ms. Ruth H. Soucy  
Manager and Legal Counsel  
Texas Comptroller of Public Accounts  
P. O. Box 13528  
Austin, Texas 78711-3528

OR2004-4625

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203105.

The Texas Comptroller of Public Accounts (the "comptroller") received a request for all documents filed by the Travis County District Attorney with the comptroller and all reports produced by the comptroller that pertain to the Travis County District Attorney and/or the Public Integrity Unit over a specified time period. You state that the comptroller will provide some of the requested information to the requestor. However, you claim that portions of the remaining requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.119, 552.130, 552.136, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also considered comments submitted by the Travis County District Attorney's Office (the "district attorney"). *See Gov't Code § 552.304* (providing that person may submit comments stating why information should or should not be released).

Initially, we address the district attorney's assertion that some of the information at issue constitutes records of the grand jury. This office has concluded that grand juries are not

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

governmental bodies that are subject to the Public Information Act ("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 Nos. 513 (1988); 398 at 2 (1983) (grand jury is part of judiciary for purposes of 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.*

In this instance, neither the district attorney nor the comptroller asserts that the comptroller created or obtained this information at the request or direction of the grand jury. We therefore conclude that the information at issue is not in the actual or constructive possession of the grand jury and is subject to the Act. Accordingly, we will address the claimed exceptions.

The comptroller and the district attorney assert section 552.108(a)(1) of the Government Code, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime... if...release of the information would interfere with the detection, investigation, or prosecution of crime." The comptroller is a law enforcement agency for purposes of administering the Tax Code. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 678-679 (Tex. 1995). In *A&T Consultants*, the court agreed that the comptroller uses audits to further the comptroller's law enforcement objectives. Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The comptroller represents that the information it has marked relates to an ongoing criminal investigation conducted by the comptroller's Criminal Investigation Division. It further asserts that release of this information would interfere with its criminal investigation. Additionally, the district attorney asserts section 552.108(a)(1) because all of the requested information relates to a pending criminal investigation and prosecution of the district attorney. Based on these representations and our review, we conclude that section 552.108(a)(1) is applicable to the submitted information, and it may be withheld on this basis. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision No. 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked

by any proper custodian of information which relates to incident). As our ruling is dispositive, we need not address the remaining arguments of the comptroller or the district attorney.

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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/krl

Ref: ID# 203105

Enc: Submitted documents

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