



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 8, 2004

Ms. Debra S. Mergel  
Assistant District Attorney  
Waller County  
836 Austin Street, Suite 103  
Hempstead, Texas 77445

OR2004-7649

Dear Ms. Mergel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209075.

The Waller County District Clerk (the "district clerk") received a request for certain information related to a specified grand jury. You claim that the requested information is not subject to the Public Information Act (the "Act"). In the alternative, you claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

We understand you to assert that the requested information is maintained by the district clerk as an agent of the judiciary and is therefore not subject to the Act. The Act applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, a "governmental body" under the Act "does not include the judiciary." Gov't Code § 552.003(1)(B). Information that is "collected, assembled or maintained by . . . the judiciary" is not subject to the Act but is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." Gov't Code § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). In addition, information that is "collected, assembled, or maintained . . . for the judiciary" by a governmental body acting as an agent of the judiciary is not subject to the Act. *Id.*; *cf.* Attorney General Opinions DM-166 (1992), H-826 (1976); Open Records

Decision Nos. 610 (1992), 572 (1990), 513 (1988), 274 (1981). Generally, in performing its duties, we believe that the district clerk acts as an agent of the judiciary.

Additionally, in Open Records Decision No. 433 (1986), this office determined that a list of prospective grand jurors is a record of the judiciary because the list is "compiled, and at virtually all times is maintained, by the jury commissioner, the district judge, or the court clerk, all of whom are part of the judiciary or agents thereof." Open Records Decision No. 433 at 2-3 (1986). It is our understanding that the district clerk maintains the submitted information on behalf and at the direction of the judiciary, and that it is created and maintained solely for judicial purposes. Based on this understanding, we conclude that the submitted information constitutes records maintained for the judiciary under section 552.0035(a) of the Government Code. Therefore, the district clerk has no obligation under the Act regarding the release of the requested information.<sup>1</sup>

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).

---

<sup>1</sup>The release of the requested information is within the discretion of the court. *See* Open Records Decision No. 646 at 4 n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)).

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# 209075

Enc: Submitted documents

c: Mr. George J. Parnham  
Parnham & Associates  
440 Louisiana, Suite 800  
Houston, Texas 77002  
(w/o enclosures)