



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2005

Ms. Karen Rabon
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

OR2005-11462

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 238930.

The Office of the Attorney General (the "OAG") received a request for information concerning the Friendswood Independent School District (the "district") that the OAG possesses since January 1, 2004. The requestor excludes from the request documents the district provided in response to certain open records requests. The OAG has released some of the information, including the basic information concerning the criminal matter in accordance with section 552.108(c). *See* Gov't Code § 552.108(c) (basic information about arrest, crime, or arrestee is not excepted under Gov't Code section 552.108). The OAG claims the remaining information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted sample of information.¹ We have also received and considered the requestor's comments. *See id.* § 552.304.

¹We 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). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

First, the OAG states it possesses some records as an agent of the grand jury, and therefore, such records are not subject to the Public Information Act (the "Act") because the grand jury is part of the judiciary. *See id.* § 552.003(1)(B) (definition of governmental body does not include judiciary); Open Records Decision No. 411 (1984) (grand jury is part of judiciary and records kept by district attorney who is acting as agent for grand jury are considered records in constructive possession of grand jury, and therefore are not subject to the Act). Accordingly, the OAG states it has not submitted these records for our review. The requestor disputes the OAG's assertion that section 552.003 applies to these records. We find that the OAG has not requested a decision from our office on this issue. The OAG merely informed us of the fact that it has certain records that are not subject to the Act. Because the issue is not presented to this office for a decision, this ruling does not address the propriety of the OAG's determination.

Next, the OAG asserts section 552.108(a)(2) excepts Exhibit B from public disclosure. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

The OAG argues section 552.108(a)(2) is applicable because the criminal investigation conducted by the OAG's Criminal Investigations Division (the "CID") and Criminal Law Enforcement Division (the "CLEd") resulted in a no bill by the Galveston County grand jury. The requestor challenges the CLED's authority to act as a prosecutor in this instance. We need not address the requestor's contention because the requestor does not dispute the authority of the CID to conduct a criminal investigation into this matter. Because Exhibit B pertains to the CID's case that concluded in a result other than conviction or deferred adjudication, we agree that section 552.108(a)(2) is applicable. As section 552.108 is dispositive, we do not address the OAG's other assertions for Exhibit B.

Lastly, the OAG contends section 552.107(2) excepts Exhibit C from public disclosure. Section 552.107(2) provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). The OAG explains Judge Lonnie Cox ordered Exhibit C be placed under seal. Exhibit C consists of records that have been filed with a court. Thus, Exhibit C is subject to section 552.022(a)(17), which provides that information that is also contained in a public court record is public information and not excepted from disclosure unless it is expressly confidential under other law. *Id.* § 552.022(a)(17). Section 552.022 further provides:

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of

public information for inspection or duplication, unless the category of information is expressly made confidential under other law.

Id. § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022(a)(17), we conclude the OAG may not withhold Exhibit C based on section 552.107(2).

In summary, the OAG may withhold Exhibit B pursuant to section 552.108(a)(2). The OAG must release Exhibit C.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/krl

Ref: ID# 238930

Enc: Submitted documents

c: Ms. Janet Little Horton
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(w/o enclosures)