



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2006

Ms. Ashley D. Fourt
Assistant District Attorney
Tarrant County
401 W. Belknap
Fort Worth, Texas 76196-0201

OR2006-09535

Dear Ms. Fourt:

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# 257321.

The Tarrant County District Attorney (the "district attorney") received a request for the documents collected regarding the requestor's client. You state that you are releasing some information, which you have submitted as Exhibit C, but claim that the remaining information is not subject to the Act. In the alternative, you claim that the remaining information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address your argument that certain responsive information consists of grand jury records that are 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 that are within their actual or constructive possession are not subject to 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 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.*

You state that in this case, the district attorney acted at the direction of a grand jury as their agent in preparing or collecting some of the responsive information. You have enclosed an affidavit from an Assistant Tarrant County District Attorney attesting to the fact that the information at issue is maintained by the district attorney as an agent of the grand jury and that such information was compiled at the express direction of a Tarrant County Grand Jury pursuant to a grand jury subpoena. You further state that this affidavit has been presented to this office in lieu of the actual information prepared or collected by the district attorney as the grand jury’s agent. *See* Open Records Decision No. 513 at 4-5 (providing that, while district attorney need not submit copies of information obtained pursuant to a grand jury subpoena or information collected at the direction of the grand jury, governmental body should submit affidavit stating that requested information was prepared or collected at the express direction of the grand jury). Based on your representations and the submitted affidavit, we agree that information in the custody of the district attorney as agent of the grand jury is not subject to the Act. As our ruling on this issue is dispositive, we need not address your remaining arguments.

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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 257321

Enc. Submitted documents

c: Mr. James B. Carroll III
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(w/o enclosures)