



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2007

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
1201 Franklin Street, Suite 600
Houston, Texas 77002

OR2007-00203

Dear Mr. Durfee:

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# 269241.

The Harris County District Attorney (the "district attorney") received a request for "the complete file" regarding a specific case. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, you claim that the documents in Exhibit B-1 were obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See Gov't Code § 552.003(1)(B)*. This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See Open Records Decision No. 411 (1984)*. Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and therefore are not subject to the Act. *See Open Records Decisions Nos. 513 (1988), 411*

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.

(1984), 398 (1983); *but see* Open Records Decision No. 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* Open Records Decision No. 513. Therefore, to the extent that Exhibit B-1 is held by the district attorney as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. The rest of this decision is not applicable to such information. To the extent that Exhibit B-1 is not held by the district attorney as an agent of the grand jury, it is subject to the Act, and we consider it with the remaining submitted information.

Section 552.108 provides, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body must reasonably explain how and why section 552.108 is applicable to the information that the governmental body seeks to withhold under this exception. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993, orig. proceeding), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380.

The present request is for "the complete file" regarding a specific case. You claim that because the request encompasses the district attorney's entire litigation file, the district attorney may withhold the submitted information in its entirety under section 552.108(a)(4).

Based on your arguments and our review of the information, we find that section 552.108(a)(4) is applicable in this instance.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front page offense and arrest information, the district attorney may withhold the submitted information from disclosure based on section 552.108(a)(4) and the court's holding in *Curry*. The district attorney has the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

Finally, we note that the submitted information includes the arrestees' social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.² The district attorney must withhold the arrestees' social security numbers under section 552.147.

In summary, to the extent that Exhibit B-1 is held by the district attorney as an agent of the grand jury, it is in the grand jury's constructive possession and is not subject to disclosure under the Act. With the exception of the basic front page offense and arrest information, the district attorney may withhold the submitted information from disclosure based on section 552.108(a)(4) and the court's holding in *Curry*. The district attorney must withhold the arrestees' social security numbers under section 552.147. As our ruling is dispositive, we need not consider 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).

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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/eb

Ref: ID# 269241

Enc. Submitted documents

c: Mr. LANCE C. HAMM
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(w/o enclosures)