



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 30, 2008

Ms. Amy Columbus  
Assistant District Attorney  
Dallas County  
Frank Crowley Courts Building  
133 North Industrial Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2008-01438

Dear Ms. Columbus:

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# 303485.

The Dallas County District Attorney's Office (the "district attorney") received a request for the prosecution files for two causes that resulted in convictions. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that some of the submitted information is not related to the requested prosecution files; thus, this information is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the district attorney is not required to release this information, which we have

---

<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). 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.

marked, in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

We also note that some of the submitted information appears to be records of a grand jury. The judiciary is expressly excluded from the requirements of the Act. 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. Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983). *But see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). Thus, to the extent that the information at issue is held by the district attorney as agent of the grand jury, it consists of records of the judiciary not subject to disclosure under the Act. To the extent the submitted information does not consist of records of the judiciary, we will address your exceptions to disclosure.

The district attorney also acknowledges, and we agree, that the district attorney failed to comply with the procedural requirements of section 552.301 of the Government Code. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider whether these sections require the district attorney to withhold the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The remaining information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information is within the scope of section 261.201. You do not indicate that the district attorney has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that the remaining information is confidential pursuant to section 261.201 of the Family Code, and the district attorney must withhold it under section 552.101 of the Government Code.<sup>2</sup> See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

To conclude, the district attorney is not required to release the information marked as non-responsive in response to this request. Any documents held by the district attorney as agent of the grand jury are records of the judiciary and not subject to disclosure under the Act. The district attorney must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

---

<sup>2</sup>Because we are able to resolve this under section 261.201, we do not address your other arguments for exception of this information.

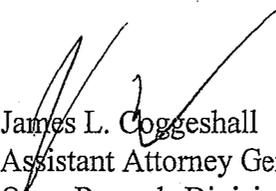
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jh

Ref: ID# 303485

Enc. Submitted documents

c: Ms. Krystle Hooper  
Habern, O'Neil & Buckley, L.L.P.  
P.O. Box 8930  
Huntsville, Texas 77340  
(w/o enclosures)