



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2008

Mr. Paul F. Wienskie
204 South Mesquite
Arlington, Texas 76010

OR2008-04471

Dear Mr. Wienskie:

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# 306899.

The Euless Police Department (the "department"), which you represent, received a request for 24 categories of information related to a specified traffic accident. You indicate that you have released most of the requested information and that you do not have information responsive to a portion of the request.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

You state that the department obtained the submitted information pursuant to a grand jury subpoena. We note that the judiciary is expressly excluded from the requirements of the Act. *See Gov't Code § 552.003(1)(B)*. This office has determined that for the purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See Open Records Decision No. 411 (1984)*. Moreover, 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 are therefore not subject to the Act. *See Open Records Decisions Nos. 513 (1988), 398 (1983); but see ORD 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

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); *Open Records Decision No. 452 at 3 (1986)*.

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* ORD 513.

You state, and provide documentation showing, that the submitted information was obtained pursuant to a grand jury subpoena and is maintained by the department as an agent of the grand jury. Based on your representations, we conclude that the submitted information is in the grand jury's constructive possession and is therefore not subject to disclosure under the Act. As we are able to make this determination, we need not address your remaining arguments against the disclosure of this information.

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 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,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 306899

Enc. Submitted documents

c: Mr. Scott W. Wert
Foster & Sear, L.L.P.
524 East Lamar Boulevard, Suite 200
Arlington, Texas 76011
(w/o enclosures)