



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2008

Mr. Art Pertile, III  
Olson & Olson, LLP  
Wortham Tower, Suite 600  
2727 Allen Parkway  
Houston, Texas 77019

OR2008-08604

Dear Mr. Pertile:

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# 313810.

The City of Brookshire (the "city"), which you represent, received three requests from the same requestor for information pertaining to the 2006 and 2007 Crawfish Festivals. You claim that the requested information is not subject to the Act. We have reviewed the submitted representative sample of information.<sup>1</sup>

You argue that the submitted information is not subject to the Act because the information constitutes grand jury information. 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, 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

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<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.

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. You state that the submitted information is "information collected by the [city] at the direction of and as the agent of a Federal grand jury." You have submitted a subpoena from the Grand Jury of the United States District Court, Southern District of Texas to support your arguments. However, we note that the submitted information consists of a check issued by the city to pay for services and invoices submitted to the city regarding products the city purchased. In this instance, you have not demonstrated that the submitted information is maintained by the city on behalf of the grand jury or that the information is otherwise in the constructive possession of the grand jury. Rather, the information in question appears to have been created and to be held by the city in its own official capacity. We therefore conclude that the submitted information is subject to the Act and must be released unless it is demonstrated to fall within an exception to public disclosure.

We note that a portion of the submitted information is subject to section 552.136 of the Government Code.<sup>2</sup> Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, we find that the city must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code. As you have raised no other exceptions to disclosure, the remaining information must be released.

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). If the governmental body does not file suit over 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

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

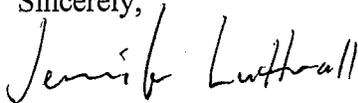
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 313810

Enc. Submitted documents

c: Ms. Lori Ann Lilley  
The Times Tribune  
P.O. Box 1549  
Brookshire, Texas 77423  
(w/o enclosures)