



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 23, 2008

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

OR2008-10005

Dear Mr. 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# 316571.

The Tarrant County District Attorney's Office (the "district attorney") received a request for "any and all records related to the investigation and prosecution of [a named individual]" for a specified crime. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.130 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. 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.

Initially, we note that the submitted information is subject to section 552.022(a)(1) of the Government Code. Section 552.022 provides in pertinent part that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code §§ 552.022(a)(1). The submitted case files constitute a completed investigation made by the district attorney. A completed investigation must be released under section 552.022(a)(1) unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Sections 552.103 and 552.111 of the Government Code are discretionary exceptions to public disclosure that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas, 1999, no pet.) (governmental body may waive section 552.103), Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.103), Open Records Decision No. 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived). As such, sections 552.103 and 552.111 of the Government Code are not "other law" that make information confidential for the purposes of section 552.022. Therefore, the district attorney may not withhold any of the submitted information under sections 552.103 or 552.111. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.101, 552.108, 552.130, and 552.147, we will address these claims for the submitted information.

Section 552.101 of the Government Code exempts 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 submitted 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 submitted 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>1</sup> See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, 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 submitted 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

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<sup>1</sup>Because we are able to resolve this under section 261.201, we do not address your other arguments for exception of this information.

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 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 316571

Enc. Submitted documents

c: Ms. Elena Aviles  
Innocence Project  
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New York, New York 10011  
(w/o enclosures)