



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 6, 2008

Ms. Myrna S. Reingold
Staff Attorney
Galveston County Legal Department
722 Moody, 5th Floor
Galveston, Texas 77550-2317

OR2008-10673

Dear Ms. Reingold:

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# 318222.

The Galveston County Criminal District Attorney (the "district attorney") received a request for "all documents collected during the now closed investigation into League City council's trash company switch." You state you have provided some of the responsive information to the requestor. You also state you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that most of the submitted investigation documents are not subject to the Act. Additionally, you claim that all of the submitted investigation documents are excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, 552.136, and 552.137 of the Government Code. Furthermore, you claim that the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you state, and have provided documentation showing, that you notified McNeillus USA of the district attorney's receipt of the request for information and of the company's right to submit arguments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered your arguments and reviewed the submitted information.

¹ 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.

You assert that most of the submitted investigation documents are not subject to the Act because they were obtained pursuant to a grand jury subpoena or at the direction of the 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 is 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), 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 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 the submitted investigation documents that were obtained pursuant to a grand jury subpoena and/or at the direction of the grand jury are being held by the district attorney as an agent of the grand jury. Thus, the submitted investigation documents that were obtained pursuant to a grand jury subpoena or at the direction of the grand jury are in the grand jury's constructive possession and are not subject to the Act.² This decision does not address the public availability of such information. The remaining submitted information, however, is subject to the Act, and must be released unless it falls within an exception to public disclosure.

You seek to withhold account numbers in the submitted information under section 552.136 of the Government Code, which provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

² As our ruling on this information is dispositive, we need address your remaining arguments against disclosure of this information.

Gov't Code § 552.136. Thus, the district attorney must withhold the bank account and routing number you have marked, in addition to the customer account numbers we have marked, in the submitted information under section 552.136 of the Government Code.

You seek to withhold certain e-mail addresses in the remaining information under section 552.137 of the Government Code, which provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

...

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

...

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

Id. § 552.137(a)-(c). All of the e-mail addresses you have marked to withhold belong to people who have contractual relationships with Galveston County or were provided on a letterhead. Therefore, none of the e-mail addresses you have marked in the remaining information may be withheld under section 552.137 of the Government Code. As you have not raised any other exceptions to disclosure for this information, the marked e-mail addresses must be released.

Finally, an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from McNeillus USA explaining why the submitted information related to it should not be released. Therefore, we have no basis to conclude that McNeillus USA has protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

In summary, the submitted investigation documents that were obtained pursuant to a grand jury subpoena or at the direction of the grand jury are in the grand jury's constructive possession and are not subject to the Act. The district attorney must withhold the bank account and routing number you have marked, in addition to the customer account numbers we have marked, under section 552.136 of the Government Code. 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).

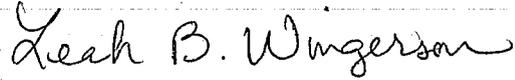
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 318222

Enc. Submitted documents

c: Ms. Sara McDonald
Reporter
The Galveston County Daily News
8522 Teichman Road
Galveston, Texas 77554
(w/o enclosures)

McNeillus USA
1101 Interstate 45 South
P.O. Box 458
Hutchins, Texas 75141
(w/o enclosures)

Mr. Patrick Breen
Associate General Counsel
Oshkosh Truck Corporation
2307 Oregon Street
P.O. Box 2566
Oshkosh, Wisconsin 54903-2566
(w/o enclosures)