



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 30, 2008

Ms. Claire Yancey  
Assistant District Attorney  
Denton County Criminal District Attorney  
P.O. Box 2850  
Denton, Texas 76202

OR2008-14825

Dear Ms. Yancey:

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# 326692.

The Denton County District Attorney (the "district attorney") received a request for "copies of the contents" of a certain prosecution file. You claim that information within the requested file is not subject to the Act under section 552.003(1)(B) as a record of the judiciary. You also claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130 and 552.147 of the Government Code. We have considered your claims and reviewed the submitted information.

We begin with your claim that information within the requested file is not subject to the Act as a record of the judiciary. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has concluded that grand juries are not subject to the Act and that records that are within the constructive possession of grand juries are not public information subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). 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 the Act. *See id.* Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *See id.*

In this case, you state that information within the requested file is held on behalf of the Denton County Grand Jury. The situation here is similar to the situation we addressed in Open Records Decision No. 513 (1988). In that decision, the Dallas County District Attorney claimed that all of the information responsive to an open records request and contained in his investigation file was in the constructive possession of the Dallas County Grand Jury because the information was held by the district attorney as an agent of the grand jury. The Dallas County District Attorney thus asserted that his entire investigative file was subject to the judiciary exclusion and outside the reach of the Act. In response to this argument, we stated:

Not all of the information at issue here can be deemed to be within the constructive possession of the grand jury. Your investigation began before any information was submitted to the grand jury. Moreover, the grand jury did not formally request or direct all of the district attorney's actions in this investigation. *See generally* Open Records Decision No. 398 (1983) (audit prepared at direction of grand jury). Information obtained pursuant to a grand jury subpoena issued in connection with this investigation is within the grand jury's constructive possession. On the other hand, 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. Information not produced as a result of the grand jury's investigation may be protected from disclosure under one of [the Act's] exceptions, but it is not excluded from the reach of [the Act] by the judiciary exclusion.

*Id.* Thus, only those portions of the submitted information "obtained pursuant to a grand jury subpoena issued in connection with [the] investigation" are within the grand jury's constructive possession and therefore subject to the judiciary exclusion and outside the reach of the Act.

We have no indication that the grand jury subpoenaed the submitted information. Thus, we find that to the extent the district attorney obtained the submitted information pursuant to grand jury subpoena or collected the information at the express direction of the grand jury, the submitted information is in the custody of the district attorney as agent of the grand jury and the information is a record of the judiciary. As such, the information is not subject to disclosure under the Act. However, to the extent that any portion of this information is not in the custody of the district attorney as agent of the grand jury, we will address your claims.

Next, we note that the submitted information is subject to section 552.022(a)(1) of the Government Code, which provides 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 information constitutes 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. Thus, we will consider the district attorney's claims under sections 552.101 , 552.108 and 552.130 of the Government Code.

Section 552.101 excepts from disclosure information made confidential by law including information made confidential by statute. *Id.* § 552.101. You raise article 20.02(a) of the Code of Criminal Procedure, which provides that "[t]he proceedings of the grand jury shall be secret." Crim. Proc. Code art. 20.02(a). When construing article 20.02(a), the types of "proceedings" Texas courts have generally stated are secret are testimony presented to the grand jury and the deliberations of the grand jury. *In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, no pet.); *see also Stern v. State*, 869 S.W.2d 614 (Tex. App.—Houston [14th Dist] 1994, no writ) (stating that anything that takes place before the bailiffs and grand jurors, including deliberations and testimony, is secret). You state that information within the district' attorney's file was presented to the Denton County Grand Jury on May 29, 2008. However, the fact that information was submitted to the grand jury does not mean the information is confidential in the hands of the district attorney. *See Open Records Decision No. 513 at 4 (1988)*. After review of the information and consideration of your arguments, we conclude that you have not established that the information reveals grand jury testimony or deliberations. Accordingly, the district attorney may not withhold this information under article 20.02(a).

Section 552.108 of the Government Code provides in pertinent part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

- (4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) represents the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Id.* at 380 (quoting *Nat'l Fire Ins. Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993)). In this instance, the requestor seeks all of the district attorney's documents related to a specified prosecution. We agree that this request encompasses the district attorney's entire case file. In addition, you state that the submitted information

contains information, internal records, and notations prepared by the Assistant Criminal District Attorney representing the State of Texas in the course of preparing for criminal litigation. More specifically, the documents within the prosecution file are strategically organized and contain handwritten notations which depict the independent thoughts and judgments made by the Assistant Criminal District Attorney.

Thus, based on your representations and our review of the submitted information, we agree that sections 552.108(a)(4) of the Government Code is applicable in this instance.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the district attorney may withhold the remaining information from disclosure based on section 552.108(a)(4) of the Government Code.<sup>1</sup>

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<sup>1</sup>Because our ruling is dispositive, we need not address your remaining arguments against disclosure.

In summary, to the extent that the submitted information is held by the district attorney as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. Other than basic front-page offense and arrest information, the district attorney may withhold the remaining information under section 552.108(a)(4) of the Government 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). 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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/jh

Ref: ID# 326692

Enc: Submitted documents

c:



(w/o enclosures)