ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2009

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

OR2009-00808

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# 332662.

The Denton County Criminal District Attorney (the "district attorney") received a request for all information related to a specific criminal complaint. 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 have also considered the arguments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You state that the information requested is maintained by the district attorney on behalf of the Denton County Grand Jury and is therefore not subject to the Act. *See* Gov't Code §§ 552.003(B), .0035(a); *see also* Open Records Decision No. 398 at 2 (1983) (grand jury is part of judiciary for purposes of the Act). 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. Open Records Decision No. 411 (1984). Further, records kept by a district attorney who is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983). *But see* Open Records Decision No. 513 at 4 (1988)

(defining limits of judiciary exclusion). We find the situation here to be substantially similar to the situation we addressed in Open Records Decision No. 513 (1988). In that decision, a 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 grand jury because the information was held by the district attorney as an agent of the grand jury. The 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. [emphasis added]

Open Records Decision No. 513 at 3 (1988). As explained above, we believe that only those portions of the responsive 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. *Id.* We have no indication that the grand jury subpoenaed the submitted investigation files of the district attorney and we do not believe release of this information implicates the confidentiality provision at article 20.02(a) of the Code of Criminal Procedure ("The proceedings of the grand jury shall be secret."). Thus, to the extent that the information at issue is held by the district attorney as an agent of the grand jury, it consists of records of the judiciary not subject to disclosure under the Act. To the extent the submitted information does not consist of records of the judiciary, we will address your exceptions to disclosure.

Next, we note that some of the submitted information consists of minutes of an open meeting. Section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides that the "minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." Gov't Code § 551.022. Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the

Government Code. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Thus, the district attorney may not withhold the meeting minutes under any of the claimed exceptions and must release this information, which we have marked, to the requestor.

Section 552.108 provides in relevant part the following:

> (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) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(4) is applicable to information that was prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or that reflects the mental impressions or legal reasoning of an attorney representing the state. When a request essentially seeks the entire prosecution file, the information is excepted from disclosure in its entirety pursuant to the holding in *Curry v. Walker*. 873 S.W.2d 379 (Tex. 1994) (discovery request for district attorney's entire litigation file may be denied because decision of what to include in file necessarily reveals prosecutor's mental impressions or legal reasoning). The request for information encompasses the district attorney's entire case file; therefore, *Curry* provides that the release of the information would reveal the district attorney's mental impressions or legal reasoning. Accordingly, we find that subsection 552.108(a)(4) of the Government Code applies to the submitted information.

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle Publ'g Co, v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. — Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (per curiam). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with

the exception of basic information, the district attorney may withhold the remaining submitted information at issue under section 552.108(a)(4) of the Government Code. As 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. The district attorney must release the marked meeting minutes in accordance with the Open Meetings Act. Other than basic 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 information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/eeg

Ref: ID# 332662

Enc. Submitted documents

c: Requestor
(w/o enclosures)