



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2010

Ms. Deborah F. Harrison
Assistant District Attorney
210 South McDonald, Suite 324
McKinney, Texas 75069

OR2010-07580

Dear Ms. Harrison:

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# 380511.

The Collin County District Attorney's Office (the "district attorney") received a request for all records pertaining to a specified complaint. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.130, 552.132, 552.1325, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You generally state the requested information is maintained by the district attorney on behalf of the grand jury and is therefore not subject to the Act. 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 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 generally assert the submitted records are held by the district attorney on behalf of the grand jury, and have provided this office with an affidavit supporting this representation. In this instance, you have identified Item II.A. as paperwork generated by the grand jury and Item II.J. as a recording of grand jury testimony. Thus, to the extent that the information in Items II.A. and II.J. is held by the district attorney as agent of the grand jury, it constitutes records of the judiciary that are not subject to disclosure under the Act. To the extent the information in Items II.A. and II.J. does not consist of records of the judiciary, we will address your exceptions to disclosure. However, you provide no arguments explaining how the remaining information is held by the district attorney on behalf of the grand jury. On the contrary, you represent these records are part of the district attorney's prosecution file. Accordingly, we conclude the remaining files were created and are maintained as part of the district attorney's investigation and subsequent presentation to the grand jury. Thus, we find all the remaining records are subject to the Act and may only be withheld if an exception under the Act applies. *See* Gov't Code § 552.002 (providing that information collected, assembled, or maintained in connection with the transaction of official business by a governmental body is "public information").

Next we address your arguments against disclosure of the information subject to the Act. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). The requestor in this case knows the identity of the alleged victim. We believe that, in this instance, withholding only identifying information from the requestor would not preserve the victim's common law right to privacy. We conclude, therefore, that

the district attorney must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹

In summary, to the extent the information in Items II.A. and II.J. is held by the district attorney as agent of the grand jury, it constitutes records of the judiciary and is not subject to the Act. The district attorney must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 380511

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.