



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 3, 2010

Ms. J. Macklin Milligan  
Assistant District Attorney  
County of Harris  
1201 Franklin, Suite 600  
Houston, Texas 77002-1901

OR2010-16616

Dear Ms. Milligan:

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# 399036.

The Harris County District Attorney (the "district attorney") received a request for the district attorney's entire case file related to a named defendant. You claim that some of the requested information consists of records held by the district attorney on behalf of the grand jury and is, therefore, not subject to the Act. Alternatively, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You state the district attorney now holds some of the submitted documents for the grand jury as their custodian. 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 state the submitted records in Appendix B-5 are held by the district attorney on behalf of the grand jury. Accordingly, we find the submitted information in Appendix B-5 consists of records of the judiciary, and therefore, is not subject to disclosure under the Act. We therefore do not address your arguments against disclosure of this information.

Section 552.101 of the Government Code excepts from disclosure "[i]nformation considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides as follows:

(a) [T]he 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.

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, 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). Upon review, we find the remaining submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (defining "abuse" and "neglect"); *see also* Penal Code § 22.04(c)(1) (defining "child" for purposes of Penal code section 22.04 as a person 14 years of age or younger). As you do not state that the district attorney has adopted a rule that governs the release of this type of information, we assume that none exists. Given that assumption, we conclude the remaining submitted information is confidential under section 261.201(a) of the Family Code, and the district attorney must withhold this information in its entirety under section 552.101 of the Government Code on that basis.

In summary, the information in Appendix B-5 consists of records of the judiciary and is not subject to disclosure under the Act. The district attorney must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As our ruling is dispositive, we do not address your remaining claims.

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 399036

Enc. Submitted documents

c: Requestor  
(w/o enclosures)