



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2010

Mr. Martin L. Peterson  
Assistant District Attorney  
Dallas County District Attorney's Office  
133 North Riverfront Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2010-19293

Dear Mr. Peterson:

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# 402635.

The Dallas County District Attorney's Office (the "district attorney") received a request for several categories of information pertaining to a specified cause number. You claim the requested information is excepted from disclosure under sections 552.101, 552.108, 552.1325, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note the requestor excludes from his request "polygraph reports, attorney work product, medical records[,] biometric identifiers (including DNA results) [and] compiled criminal histories." Accordingly, any such information is not responsive to the present request, we do not address your arguments for this information, and it need not be released.

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Next, we note Packet E consists of grand jury testimony. The judiciary is expressly excluded from the requirements of the Act. *See* 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* Open Records Decision No. 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* Open Records Decision No. 513 (1998). Thus, to the extent Packet E is held by the district attorney as agent of the grand jury, it consists of records of the judiciary not subject to disclosure under the Act. To the extent Packet E does not consist of records of the judiciary, we will address your exception to disclosure against this information.

We now turn to your claim under section 552.108 of the Government Code as it is potentially the most encompassing. You seek to withhold the remaining responsive information under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. These sections provide in relevant parts as follows:

(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.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(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), (b)(3). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and "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 Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993)). Accordingly, the court concluded in such an instance, the district attorney's entire litigation file is privileged attorney work product.

You contend the request for information essentially encompasses the entire prosecution file for the case at issue and argue release of the file would reveal the mental impressions or legal reasoning of prosecutors. However, as noted above, the requestor specifically excludes polygraph reports, attorney work product, medical records, biometric identifiers and compiled criminal histories. Therefore, the present request is not for the entire litigation file and *Curry* is inapplicable. Additionally, we find a prosecutor did not prepare the responsive information and you have failed to demonstrate such information reveals the mental impressions or legal theories of a prosecutor. Therefore, the district attorney may not withhold the information at issue under subsections 552.108(a)(4) and (b)(3) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by statutes, including 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 of the Code of Criminal Procedure, 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). Packet E consists of grand jury testimony, and is therefore confidential under article 20.02(a) of the Texas Code of Criminal Procedure and must be withheld under section 552.101 of the Government Code.

You assert information in Packet B is excepted under section 552.1325 of the Government Code, which provides:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Gov't Code § 552.1325. The definition of a victim under article 56.32 of the Code of Criminal Procedure includes an individual who suffers physical or mental harm as a result of criminally injurious conduct. Crim. Proc. Code § 56.32(a)(10), (11). Packet B consists of a victim impact statement as defined by article 56.03 of the Code of Criminal Procedure that was completed by the victim in the case at issue. *See id.* § 56.03. The statement reflects the victim suffered economic and mental harm as a result of the criminally injurious conduct. Therefore, the district attorney must withhold the crime victim's name, address, telephone number, and other identifying information we have marked in Packet B under section 552.1325 of the Government Code. As you have claimed no other exceptions to disclosure for the remaining information in Packet B, it must be released

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the district attorney must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>2</sup>

In summary, to the extent that the information in Packet E 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. To the extent the information in Packet E is not held the district attorney as an agent of the

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<sup>2</sup>We note that this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

grand jury, it must be withheld under article 20.02(a) of the Texas Code of Criminal Procedure in conjunction with section 552.101 of the Government Code. The district attorney must withhold the information we have marked in Packet B under section 552.1325 of the Government Code. The district attorney must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining responsive information must be released.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eb

Ref: ID# 402635

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)