



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-1285

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 100482.

Travis County (the "county") received a request for "access to all documents reflecting actual expenditures of the Travis County District Attorney's Office for the years 1990 through 1995 to include all expenditures by the Public Integrity Unit for said years." You say that most of the requested information is public and will be released. However, you assert that portions of the requested information are excepted from required public disclosure based on sections 552.101, 552.103, 552.108, and 552.117 of the Government Code. You also assert that certain portions of expenditure records pertaining to the proceedings of the Travis County Grand Jury are not subject to the act. You submitted representative samples of the requested information.¹

¹In reaching our conclusion here, 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

We begin with the grand jury information, which you explain "consists of payment vouchers showing payments to court reporters for depositions taken before the Travis County Grand Jury . . . [which] include lists of witnesses who appeared before the Grand Jury in particular cases." You also state that "[o]ther Grand Jury records include dates on which presentations were made to the Grand Jury hereby reflecting Grand Jury proceedings which are secret."

The act generally requires the public disclosure of information maintained by a "governmental body." Gov't Code § 552.002. The act's definition of "governmental body" does not include the judiciary. Gov't Code § 552.003(1)(B). Because the grand jury is an extension of the judiciary, the act does not apply to information in its possession. *See* Open Records Decision No. 513 (1988).

When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information prepared or collected by the agent is within the grand jury's constructive possession. *See* Open Records Decision No. 513 (1988), *see also Stern v. State ex rel. Ansel*, 869 S.W.2d 614, 621 (Tex. App.--Houston [14th Dist.] 1994, writ denied). A prior decision of this office concluded that a list of individuals subpoenaed to appear before a grand jury in a particular case is "constructively in the possession of the grand jury . . . even though it may have physically been in the possession of the district attorney as well as the grand jury." Open Records Decision No. 411 (1984). The decision reasoned that the list was in the grand jury's constructive possession because it was prepared, and the subpoenas were issued, by individuals who were in effect acting as agents of the grand jury. Since the grand jury is part of the judiciary, the list was not subject to required public disclosure under the act. *See id.*

We believe that the list of witnesses on the vouchers is in the grand jury's constructive possession and consequently not subject to public disclosure under the act. We cannot conclude likewise for the dates of the presentations to the grand jury.

You also assert that the dates are made confidential by article 20.02(a) of the Code of Criminal Procedure and thus excepted from required public disclosure based on section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law, including information made confidential by statute. Article 20.02(a) of the Code of Criminal Procedure states that "[t]he proceedings of the grand jury shall be secret." We believe this makes confidential what transpires before the grand jury. *See Stern v. State ex rel. Ansel* 879 S.W.2d 614. We do not believe the protection for grand jury proceedings extends to the date that the proceeding occurred.

Section 552.117 protects from required public disclosure the home address, home telephone number, social security number, and information about family members of a current or former official or employee who has complied with the requirements of

section 552.024 of the Government Code, or of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. We conclude you may withhold from required public disclosure the information covered by section 552.117.² Please note that in order to withhold an employee's section 552.117 information, that employee must have exercised the section 552.024 option at the time of the county's receipt of the request for information. See Open Records Decision No. 530 (1989).³

You also raise section 552.101 in conjunction with the common-law right to privacy in regard to the release of the names of victims of child abuse, victims of sexual assault and patients of psychologist or psychiatrists as well as certain financial information. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We agree that section 552.101 covers such names as information protected from public disclosure under the common-law right to privacy. *Id.* We also agree that the personal bank account numbers and credit card numbers are protected from public disclosure under the common-law right to privacy. See Open Records decision No. 600 (1992).

You assert that exhibit A includes information which constitutes criminal history records protected from public disclosure by a right to privacy, citing *United States Dep't of Justice v. Reports Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Criminal history record information is a compilation of a private individual's criminal offenses. We do not believe the file you marked "Information Made Confidential by Law" contains criminal history record information.

You assert section 552.108 of the Government Code applies to telephone and travel records of investigators and attorneys handling certain criminal cases, portions of expense records that reveal specific operations directly related to the investigation or detection of crime, and names and addresses of witnesses. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n 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." Gov't Code § 552.108; see *Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). Pursuant to this

²Given our conclusion in regard to your section 552.117 claim, we need not consider your section 552.108 claim for the same information.

³Given our conclusion in regard to your section 552.117 claim, we need not consider your section 552.108 claim for the same information.

recent Supreme Court opinion, we must apply the plain language of section 552.108. *See Holmes v. Morales*. We agree that section 552.108 excepts from public disclosure the names and addresses of witnesses, information that reveals action taken in a specific criminal case, and telephone numbers called by investigators and attorneys handling certain criminal cases. However, we do not believe the exception applies to the amounts of those calls, the amounts on the expense records that reveal law enforcement operations, or the travel records. We believe such information only indirectly "deals with the detection, investigation, or prosecution of crime" and more directly deals with county expenses.

Finally, you raise section 552.103 for a portion of the information. The information you enclosed in your file marked "Pending Litigation" includes witness fee invoices and a "Request for Payment" form for the services of an expert witness. Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). From the face of the documents, we can determine that the information relates to criminal litigation. We conclude that the county may withhold from disclosure pursuant to section 552.103 the name of the witness and the portion of the invoice that describes the services rendered.⁴ We do not believe you have established that the remaining information is related to the criminal litigation.

⁴We note that if the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, written over a white background.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 100482

Enclosures: Submitted documents

cc: Mr. Shane Phelps
P.O. Box 2013-182
Austin, Texas 78768-2013
(w/o enclosures)