OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 5, 1999

Ms. Tenley A. Aldredge
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR99-0903

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 123157.

The Travis County Attorney's Office (the "county attorney") received a request for various identified records, which were discussed at an interview with the requestor's client on December 15, 1998. In response to the request, you submit to this office for review the information which you assert is responsive. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. In addition, you also assert that the requested information is not subject to the act pursuant to section 552.003 of the Government Code. We have considered the arguments and exceptions you raise and reviewed the submitted information.

Initially, we address your contention that the requested documents are not subject to the act pursuant to section 552.003(1)(B), as they are records of the grand jury, and thus records of the judiciary. The act does not apply to information within the actual or constructive possession of the grand jury. 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.[1] *Id.*

You assert that "[a]ll of the documents requested by [the requestor] were obtained by the County Attorney's Office pursuant to a grand jury subpoena for purposes of that office's criminal investigation." Information obtained pursuant to a grand jury subpoena issued in

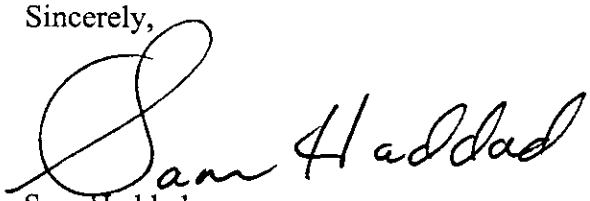
[1]Information not held or maintained in this manner is not exempt from the act's coverage and may be withheld only if one of the act's specific exceptions applies to the information. *See* Open Records Decision No. 513 (1988).

connection with this investigation is within the grand jury's constructive possession and is not subject to the act. *Id.*; *see also* Gov't Code § 552.003. However, if the county attorney's investigation began before any information was submitted to the grand jury, and the grand jury did not formally request or direct all of the county attorney's actions in this investigation, then the information is not deemed to be in the grand jury's constructive possession. The fact that information collected or prepared by the county 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 county attorney. Open Records Decision No. 513 (1988).

In this instance, you assert that "[t]he requested letters, documents, and reports all constitute testimony and evidence that was gathered by the prosecuting attorneys for presentation to the grand jury." Since, you represent that the submitted documents were obtained at the direction of the grand jury or pursuant to a grand jury subpoena, we conclude that they are not subject to the act.

As we conclude that the requested information is not subject to the act, we need not address your claimed exceptions at this time.[2] We are resolving this matter with an 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 should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Sam Haddad
Assistant Attorney General
Open Records Division

SH\nc

Ref: ID# 123157

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[2]We note that some of the information in the submitted records may also be otherwise confidential by law. Therefore, should there be a subsequent request for this information not in constructive possession of the grand jury, we advise the department to exercise caution and seek a ruling from this office concerning the records. *See* Gov't Code §§ 552.352; Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.

Enclosures: Submitted documents

cc: Mr. Neal W. Adams
Adams, Lynch & Loftin, P.C.
1903 Central Drive, Suite 400
Bedford, Texas 76021-5872
(w/o enclosures):

OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 5, 1999

Mr. John Steiner
Division Chief
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR99-0902

Dear Mr. Steiner:

You have asked whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 123534.

You assert that the requested information is excepted from disclosure based on section 552.108 of the Government Code.[1] Section 552.108 of the Government Code states that

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[1]Some of the records at issue are medical records, access to which is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Section 5.08 of the MPA provides:

> (b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.
>
> (c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

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 release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the requested information pertains to a pending case. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.*

However section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston,* 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).[2] Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

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.

Sincerely,

Ruth H. Soucy
Assistant Attorney General
Open Records Division

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). For your convenience, we have marked sample documents to show which are medical records subject to the MPA.

[2]Generally, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 362 (1983).

RHS/nc

Ref.: ID# 123534

Encl. Submitted documents

cc: Ms. Nikki A. Walters
Weeks & Associates
608-C West Twelfth Street
Austin, Texas 78701
(w/o enclosures)

OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 5, 1999

Mr. James R. Hines
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR99-0904

Dear Mr. Hines:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 123150.

Section 552.301(a) of the Government Code provides in part that:

> A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the request.

In this case, this office did not receive the request for a decision within the 10 business day period mandated by section 552.301(a). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be

disclosed. *Hancock*, 797 S.W.2d at 381; *see* Open Records Decision No. 630 (1994). You have not raised any specific compelling reasons to overcome the presumption that the information is public. Thus, we conclude that the information must be released to the requestor.

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.

Sincerely,

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 123150

encl. Submitted documents

cc: Mr. Mike McKinley
1709 Arbor Lane
Arlington, Texas 76010
(w/o enclosures)