



May 18, 2001

Mr. Miles-K. Risley
Senior Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2001-2057

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "Act"). Your request was assigned ID# 147414.

The City of Victoria (the "city") received a request for the investigating officer's narrative report regarding a specified accident involving a named individual. You have submitted responsive information that you claim is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

You represent to this office that "[s]ome of the requested information is confidential because it contains information communicated by [sic] the grand jurors."¹ Grand juries are not governmental bodies that are subject to the Act, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. *See* Gov't Code § 552.003(1)(A); Open Records Decision No. 513 (1988). When an individual or entity acts as agent of the grand jury, information that the agent prepares or collects at the grand jury's request or direction is within the grand jury's constructive possession and is not subject to the Act. *See* ORD 513 at 3. Information that is not so prepared or collected is subject to the Act and may be withheld only if a specific exception to disclosure is shown to be applicable. *Id.*

¹We assume that the city has released any other responsive records. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

You do not represent to this office, and it is not otherwise apparent from our review of the submitted information, that the information at issue was prepared or collected at the request or direction of a grand jury. Thus, we conclude that the submitted information is subject to the Act and must be released unless an exception to disclosure is applicable. *See* ORD 513 at 4 (stating that the fact, standing alone, that information collected or prepared by a governmental body is submitted to the grand jury does not mean that the information is in the grand jury's constructive possession when the governmental body also holds that same information).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that is made confidential by another statute. Article 20.02(a) of the Code of Criminal Procedure provides that "[t]he proceedings of the grand jury shall be secret." Information that reveals the deliberations of a grand jury is confidential under article 20.02(a). *See* ORD 513 at 4 (stating that information held by a governmental body that is not within the grand jury's constructive possession may be withheld from disclosure *if* releasing the information would reveal the grand jury's deliberations). We conclude, however, that you have not demonstrated that the information at issue reveals the deliberations of a grand jury. Thus, the submitted information is not excepted from disclosure under section 552.101 and must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

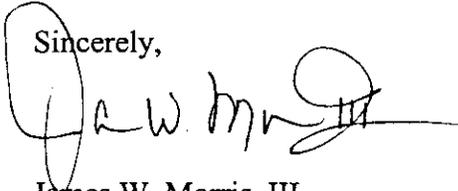
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized initial "J" on the left.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 147414

Encl: Submitted documents

cc: Mr. Samuel Valdivia
407 S. William Street
Victoria, Texas 77901
(w/o enclosures)