OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 2, 2002

Mr. Jeff Lopez
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2002-1601

Dear Mr. Lopez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160629.

The Texas Department of Public Safety (the "department") received a written request for all records pertaining to a fatal traffic accident. You indicate that the department will release most of the responsive documents to the requestor. You contend, however, that the remaining responsive documents are either not subject to the Public Information Act (the "Act") or are excepted from disclosure under section 552.101 of the Government Code.

You state that the submitted records were obtained through the use of a grand jury subpoena. We understand you to assert that the submitted information is in the constructive possession of the grand jury because the department holds the information as an agent of the grand jury. *See* Gov't Code §§ 552.003(B), .0035(a); *see also* Open Records Decision No. 398 at 2 (1983) (grand jury is part of judiciary for purposes of the Act). This office has previously concluded that grand juries are not subject to the Public Information Act (the "Act") and that records within the constructive possession of grand juries are not public information subject to disclosure under the Act. *See* Gov't Code § 552.003; *see also* Open Records Decision No. 513 (1988). Based on your representations, we conclude that the submitted information is not subject to disclosure under the Act, and therefore need not be released to the requestor.[1]

[1]Because we resolve your request on other grounds, we need not address the applicability of section 552.101 of the Government Code to these records.

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).

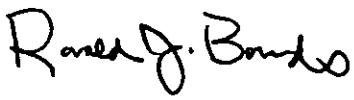
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/RWP/sdk

Ref: ID# 160629

Enc: Submitted documents

c: Mr. Timothy E. McKenna
9800 Richmond, Suite 560
Houston, Texas 77042
(w/o enclosures)