



July 15, 2002

Ms. Deborah F. Harrison  
Assistant District Attorney  
Specialized Crime Unit  
Collin County  
210 South McDonald, Suite 324  
McKinney, Texas 75069

OR2002-3831

Dear Ms. Harrison:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165558.

The Collin County District Attorney's Office (the "district attorney") received one request for copies of information pertaining to a specified inmate and another request for copies of information pertaining to a specified individual and a particular charge. You claim that the district attorney need not comply with the first request pursuant to section 552.028 of the Government Code. You also claim that the submitted information, which is responsive to both requests, is excepted from disclosure pursuant to sections 552.101, 552.103, 552.108, 552.111, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we address the information that is responsive to the first request. Section 552.028 of the Government Code states:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" means a place designated by the law of this state, another state, or the federal government for the confinement of a person arrested for, charged with, or convicted of a criminal offense.

Gov't Code § 552.028. You state that the requestor is an agent of the inmate who is the subject of the request. You have provided our office with an affidavit which states that the requestor volunteered to you that he "was seeking records in order to use them on behalf of Mr. Redmon at his upcoming parole hearing." Finally, you also state that the subject of this request is an inmate who is now imprisoned in the Institutional Division of the Texas Department of Criminal Justice. Based on your representations, we conclude that the provisions of section 552.028 of the Government Code govern this particular request. Because the individual requesting the information at issue is an agent of an individual imprisoned in a correctional facility, the Public Information Act (the "Act") gives the district attorney the discretion to either "comply with" this open records request or deny it in its entirety. Because you wish to deny the request in its entirety under section 552.028, we conclude that the district attorney may do so with regard to the entirety of the information that is responsive to the first request. Consequently, we need not address your claimed exceptions to disclosure regarding this particular request.

Next, we address the information that is responsive to the second request. We note that the Act does not apply to information that is within the actual or constructive possession of a grand jury. *See* Open Records Decision No. 513 (1988). Information that is obtained pursuant to a grand jury subpoena issued in connection with an investigation is within the grand jury's constructive possession and is not subject to the Act. *See id.*; *see also* Gov't Code § 552.003. However, we note that if an investigation began before any information was submitted to the grand jury and the grand jury did not formally request or direct all of the governmental body's actions in the investigation, then the information is not deemed to be in the grand jury's constructive possession. The fact that information collected or prepared by a governmental body is submitted to a 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 governmental body. *See* Open Records Decision No. 513 (1988). Based on our review of the information in Exhibit 11, it appears that the information was obtained at the direction of the grand jury and/or pursuant to a grand jury subpoena issued in connection with the subject investigation. Accordingly, we conclude that Exhibit 11 is not subject to the Act.

You claim that the responsive information in Exhibit 10 is subject to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup> Section 261.201 provides in part:

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<sup>1</sup> Section 552.101 exempts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Exhibit 10, as well as Exhibits 1 through 9, constitute reports, records, and working papers used or developed in an investigation of injury to a child conducted under chapter 261 of the Family Code. *See* Fam. Code § 261.301(c) (listing agencies authorized to conduct child abuse investigations). You have not indicated that the district attorney has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we conclude that the entirety of Exhibits 1 through 10 is confidential pursuant to section 261.201 of the Family Code and, thus, is excepted from disclosure pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Because we base our ruling on section 552.101 of the Government Code, we need not address your remaining claims.

In summary, the district attorney may deny the first request with regard to the entirety of the information that is responsive to that request pursuant to section 552.028 of the Government Code. Regarding the second request, the information in Exhibit 11 is not subject to the Act. The district attorney must withhold Exhibits 1 through 10 from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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).

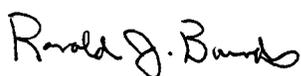
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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/seg

Ref: ID# 165558

Enc. Submitted documents

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