



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 8, 2003

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2003-2358

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179108.

The Texas Department of Public Safety (the "department") received a written request for all records pertaining to case #RC-2000-00390. You contend that portions of the requested information, a representative sample of which you submitted to this office, are excepted from required disclosure pursuant to section 552.101 of the Government Code.<sup>1</sup>

We first address your contention that certain of the requested records consisting of grand jury subpoenas and the documents that were produced to the department in response to those subpoenas are made confidential under article 20.02 of the Code of Criminal Procedure and thus must be withheld from the public pursuant to section 552.101 of the Government Code.<sup>2</sup> Article 20.02 provides for the secrecy of grand jury proceedings. However, this office has concluded that grand juries are not governmental bodies that are subject to chapter 552 of the

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<sup>1</sup>In 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 No. 499 (1988), 497 (1988). 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.

<sup>2</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Government Code, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. *See* Open Records Decision No. 513 (1988); *see also* Gov't Code § 552.003(B) (excluding "judiciary" from definition of "governmental body" subject to chapter 552). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the provisions of the Public Information Act (the "Act"). *Id.* at 3. We therefore conclude that the submitted grand jury subpoenas and the documents gathered pursuant to those subpoenas are in the custody of the department as agent of the grand jury and are not subject to disclosure under chapter 552. *Id.* at 4. We have marked these documents accordingly.

We now address the remaining records you submitted to this office as being responsive to the records request. You contend that the portions of these records that reveal the identities of witnesses and the victims of sexual assaults are excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy. We note, however, that most of the remaining records pertain to the department's investigation of the sexual assault of a child. Section 261.201(a) of the Family Code provides:

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 [of a child] 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. To the extent that the remaining submitted information pertains to an investigation of alleged child abuse, those records are made confidential in their entirety pursuant to section 261.201 of the Family Code. You have not informed this office of any rules the department has adopted that would permit access to these records. Consequently, the department must withhold the entirety of records that we have marked pursuant to section 552.101 of the Government Code.

On the other hand, the investigation records that pertain solely to investigations of bank fraud and perjury were not "used or developed in an investigation under" chapter 261 of the Family Code. Consequently, these documents are not made confidential under section 261.201 of

the Family Code. You contend, however, that the name of the victim of the child abuse, which appears in these records, is excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy. Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Clearly, an instance of sexual assault implicates the privacy interests of the assault victim. *See id.* at 683; Open Records Decision No. 393 (1983) (identity of sexual assault victim protected by common-law privacy). We therefore conclude that the department must withhold name of the victim of the alleged sexual assault. We have marked the documents accordingly.

In summary, the submitted grand jury subpoenas and the documents gathered by the department pursuant to those subpoenas constitute records of the judiciary that are not subject to disclosure under the Act. All records pertaining to the investigation of the sexual assault of a child are made confidential under section 261.201 of the Family Code and thus must be withheld in their entirety pursuant to section 552.101 of the Government Code. The remaining submitted records must be released except for the portions of those documents that reveal the name of the victim of child abuse, which must be withheld pursuant to section 552.101 of the Government Code in conjunction with the common-law right of privacy.

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 Dep't of Pub. 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,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/RWP/seg

Ref: ID# 179108

Enc: Submitted documents

c: Mr. A.W. Marshall, Jr.  
#47 Parklane Drive  
Ransom Canyon, Texas 79366  
(w/o enclosures)