



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2005

Ms. Shelly O'Brien Yeatts  
Assistant District Attorney  
Dallas County  
133 North Industrial Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2005-01238

Dear Ms. Yeatts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 221672.

The Dallas County District Attorney's Office (the "district attorney") received a request for sworn affidavits pertaining to two Dallas County employees and another named individual. You claim that the requested information is not subject to disclosure under the Public Information Act (the "Act") or, alternatively, is excepted from disclosure under section 552.108 of the Government Code. We have considered your claims and reviewed the submitted representative sample of information.<sup>1</sup>

You advise that the affidavits at issue in the present request were obtained pursuant to a grand jury subpoena. This office has concluded that a grand jury, for purposes of the Act, is part of the judiciary and is therefore not subject to the Act. *See* Gov't Code § 552.003 ("governmental body" does not include the judiciary). Further, this office has concluded that records that are within the constructive possession of a grand jury are not public information subject to disclosure under the Act. Open Records Decision No. 513 (1988). 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 Act. *See id.* Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *See id.* In this case,

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<sup>1</sup> 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 Nos. 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.

based on your representation that the district attorney maintains the information at issue as the agent of the grand jury, we find that the information is in the constructive possession of the grand jury. We therefore conclude the information at issue is not subject to disclosure under the Act and need not be released.<sup>2</sup>

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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.

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<sup>2</sup> Based on this finding, we do not reach your argument under section 552.108 of the Government Code.

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,

A handwritten signature in black ink, appearing to read "DS", with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/jev

Ref: ID# 221672

Enc: Submitted documents

c: Ms. Patti Bradley  
Attorney and Counselor at Law  
4111 North Central Expressway, Suite 105  
Dallas, Texas 75204  
(w/o enclosures)