



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2005

Mr. Brian L. Rose
Assistant General Counsel
Harris County District Attorney's Office
1201 Franklin Street, Suite 600
Houston, Texas 77002

OR2005-09317

Dear Mr. Rose:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 234458.

The Harris County District Attorney's Office (the "district attorney") received a request for tapes of meetings of the Harris County Emergency Services District No. 1 (the "district") and documents provided to the district attorney by the district. You assert that some of the requested information is not subject to disclosure under the Act. You also claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered your arguments and have reviewed the information you submitted.¹

Initially, we address your assertion that some of the submitted information is not subject to the Act because it was obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See Gov't Code* § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See Open Records Decision No. 411 (1984)*. Further, records kept by a district attorney who is acting as an agent for a grand jury are considered to be records that are in the constructive possession of the grand jury and are therefore not subject to the Act. *See Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983); but see Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion)*. The fact that information collected or prepared by the district attorney is submitted to the

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district attorney to withhold any information that is substantially different from the submitted information. *See Gov't Code* §§ 552.301(e)(1)(D), .302; *Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988)*.

grand jury does not necessarily mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney in its own capacity. Information held by the district attorney but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions, but it is not excluded from the reach of the Act by the judiciary exclusion. *See* Open Records Decision No. 513 (1988). Based on your representations, we conclude that to the extent that the district attorney obtained the submitted information pursuant to a grand jury subpoena, such information is held by the district attorney as an agent of the grand jury and is not subject to disclosure under the Act. The rest of this decision is not applicable to such information. To the extent that the submitted information is not so held, so as to be subject to the Act, we consider your arguments against disclosure.

Section 552.108 of the Government Code excepts from public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to an ongoing criminal investigation. You have submitted the affidavit of an assistant district attorney who states that release of the submitted information would interfere with the pending investigation and an anticipated prosecution. Based on your representations and the submitted affidavit, we conclude that the district attorney may withhold the submitted information that is subject to the Act under section 552.108(a)(1) of the Government Code.² *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. – Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

In summary: (1) to the extent that the district attorney obtained the submitted information pursuant to a grand jury subpoena, such information is held by the district attorney as an agent of the grand jury and is not subject to disclosure under the Act; and (2) the district attorney may withhold the submitted information that is subject to the Act under section 552.108(a)(1) of the Government 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

²As we are able to make this determination, we do not address your other arguments.

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).

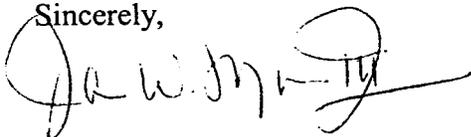
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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,



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

JWM/seg

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Enc: Submitted documents

c: Mr. J. Mark Smith
Smith & McNabb
9720 Broadway, No. 1113
Pearland, Texas 77584
(w/o enclosures)