



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2006-05281

Dear Ms. Joe:

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# 250311.

The Travis County District Attorney's Office (the "district attorney's office") received a request for information pertaining to the investigation of Bonding and Technical Services. The district attorney's office has released some of the information but asserts some of the responsive information is not subject to the Act pursuant to section 552.003 of the Government Code and the remainder is excepted from public disclosure under section 552.108. We have considered your arguments and have reviewed the submitted sample of information.¹

The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B) (judiciary is excluded from definition of "governmental body" subject to the Act). 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 another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and therefore are

¹We 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.

not subject to the Act. *See* Open Records Decisions Nos. 513 (1938), 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 another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* Open Records Decision No. 513 (1988).

The district attorney's office states that the information it has marked was obtained pursuant to a grand jury subpoena and is maintained by the district attorney's office as an agent of the grand jury. Based on your representations and our review of the information in question, we agree that it is not subject to the Act. Thus, the district attorney's office need not produce the information it has marked.

Next, the district attorney's office asserts section 552.108(a)(4) excepts the interview recordings from public disclosure. Section 552.108(a)(4) of the Government Code provides that information is excepted from public disclosure if it is information that is either (A) prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or (B) reflects the mental impressions or legal reasoning of an attorney representing the state. Based upon your representation and our review of the submitted information, we agree the district attorney's office may withhold the interview recordings under section 552.108(a)(4) because they reveal the mental impressions of the district attorney's office.

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

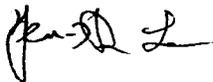
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to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



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 250311

Enc: Submitted documents

c: Ms. Kate Alexander
Staff Writer
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(w/o enclosures)