



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2006

Mr. David M. Swope
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2006-06794

Dear Mr. Swope:

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# 252655.

The Managing Director of the Justice Information Management System ("JIMS") of Harris County (the "county") received a request for "the Case file(s) in JIMS."¹ You claim that the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We understand that JIMS is a data processing department that automates the county's justice system. It consists of automated systems that provide one-time entry of data and efficient access to justice information to all agencies that require it through shared files and system resources, while restricting access to certain criminal history and other sensitive information according to local, state and federal regulations, laws and guidelines. Through a subscription system, members of the public may access the JIMS computer system and retrieve county justice records.

²We 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.

Initially, we note that the judiciary is expressly excluded from the requirements of the Act. 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. 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 records in the constructive possession of the grand jury, and therefore are also not subject to the Act. 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).

You inform us that the information in Exhibit D pertains to the issuance of a *capias* by the District Clerk's office. You explain that this information "is entered into the JIMS systems so the District Clerk's office may issue process" and that "[t]he District Clerk's office is acting as the agent for the benefit of the Grand Jury so that *capias* can be issued and then served." Based on your representations that the JIMS information at issue in Exhibit D is being held on behalf of the grand jury, we conclude that this information consists of records of the judiciary; therefore, Exhibit D is not subject to disclosure under the Act.

For the remaining information, we must address the county's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). The county received the request for information on April 5, 2006, but did not submit some of the responsive information until June 20, 2006. Thus, the county failed to comply with the procedural requirements mandated by section 552.301 for this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.101 and 552.107(2) of the Government Code can provide compelling reasons for nondisclosure of information under section 552.302; therefore, we will consider whether these sections require you to withhold the submitted information.

Some of the documents submitted on June 20, 2006 have been filed with the court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Although the county asserts that a court has ordered this information not be disclosed, section 552.022(b) provides the following:

A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is expressly made confidential under other law.

Id. § 552.022(b). Thus, because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022(a)(17), we conclude the county may not withhold the remaining information pursuant to the court orders at issue. We note, however, that some of the information in the court-filed documents is subject to sections 552.101, 552.130, and 552.147 of the Government Code, each of which constitutes "other law" that makes information confidential for purposes of section 552.022(b).

Section 552.101 excepts 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. Article 55.03 of the Code of Criminal Procedure concerns the effect of an expunction order and provides the following:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Code Crim. Proc. art. 55.03. In Open Records Decision No. 457, this office determined that records that have been ordered expunged pursuant to article 55.03 are not subject to public disclosure under the Act. Open Records Decision No. 457 at 2 (1987) (airport board may not provide expunged documents in response to request for information under the Act). You inform us that some of the requested information is subject to orders of expunction. You

have also provided this office with copies of expunction orders and the information subject to those orders. Accordingly, the requested information that is subject to orders of expunction is confidential under article 55.03, and must be withheld under section 552.101 of the Government Code. *See id.*

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The documents subject to section 552.022 contain fingerprints. You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the county must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

Some of the information at issue is subject to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The county must withhold the Texas motor vehicle record information we have marked under section 552.130.

The information subject to section 552.022 also contains a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. The county must withhold the social security number we have marked under section 552.147.³

You assert that the remaining information is excepted under Section 552.107(2) of the Government Code, which excepts from required public disclosure information if "a court by order has prohibited disclosure of the information." You assert that the remaining information is subject to court orders of nondisclosure. You have also submitted copies of these orders. Based on the county's representations and our review of the information at issue, we conclude that the county must withhold the remaining information, which we have marked, pursuant to section 552.107(2).

To conclude, Exhibit D, which consists of judicial records, is not subject to disclosure under the Act. The county must withhold (1) the information subject to expungement by court

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

the Code of Criminal Procedure, (2) the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, (3) the marked Texas motor vehicle record information under section 552.130 of the Government Code, (4) the social security number marked under section 552.147, and (5) the information marked under section 552.107(2) of the Government Code. The county must release the remaining responsive information pursuant to section 552.022 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 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).

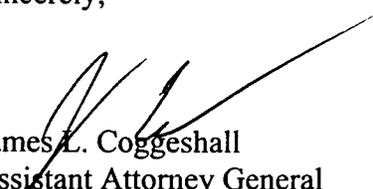
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ir

Ref: ID# 252655

Enc. Submitted documents

c: Ms. Ann Del Llano
ACLU Foundation of Texas
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(w/o enclosures)