



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2006

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

OR2006-11666

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# 261307.

The Managing Director of the Justice Information Management System ("JIMS") of Harris County and the Office of the Harris County Attorney (collectively, the "county") received a request for the "Person," "P. Trial," and "GP" files in JIMS.<sup>1</sup> You state that the county

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<sup>1</sup>We 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.

does not have some of the requested information.<sup>2</sup> You also assert that the county has previously provided the requestor with information responsive to a portion of the request, and the requestor has been notified of this fact pursuant to section 552.232 of the Government Code. *See Gov't Code § 552.232* (governmental body shall certify to requestor that copies of all or part of requested information, as applicable, were previously furnished to requestor). You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup> We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

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 some of the information at issue pertains to the issuance of capiases 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." Accordingly, to the extent that the information at issue is being held on behalf of the grand jury, we conclude that this information consists of records of the judiciary and is thus not subject to disclosure under the Act.<sup>4</sup> To the extent that the information at issue does not consist of judicial records, we will address the county's arguments for exception of this information under the Act.

Next, you inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2006-06794 (2006). With regard to information in the current request that is identical

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<sup>2</sup>We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>3</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.

<sup>4</sup>As our ruling is dispositive, we do not address your arguments for exception of this information under the Act.

to the information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the county must continue to rely on that ruling as a previous determination and withhold or release this information in accordance with Open Records Letter No. 2006-06794. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

The county asserts that some of the information at issue is excepted under section 552.101 of the Government Code, which 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 information at issue is subject to orders of expunction and have provided this office with copies of those orders. Based on your representations, we agree that the information at issue that is subject to orders of expunction is confidential under article 55.03 of the Code of Criminal Procedure, and the county must withhold this information under section 552.101 of the Government Code. *See id.*

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked the information that is confidential under common-law privacy and that the department must withhold under section 552.101.

You assert that some of the information at issue is excepted under section 552.107(2) of the Government Code, which excepts information from required public disclosure if “a court by order has prohibited disclosure of the information.” You assert that some of the information at issue is subject to court orders that prohibit disclosure of the information, and have provided this office with copies of these orders. Based on your representations, we agree that the information at issue that is subject to these court orders is excepted under section 552.107(2) of the Government Code.

We note that some of the remaining information is excepted under 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.

Finally, we note that the submitted information contains social security numbers. 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 numbers we have marked under section 552.147.<sup>5</sup>

To conclude, the information at issue that is being held on behalf of the grand jury is not subject to disclosure under the Act. The county must continue to rely on Open Records Letter No. 2006-06794 as a previous determination of the requested information that is encompassed by that decision. The county must withhold any information that is subject to orders of expunction under section 552.101 of the Government Code in conjunction with

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<sup>5</sup>We 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.

article 55.03 of the Code of Criminal Procedure and any information that is subject to other orders prohibiting disclosure of the information under section 552.107(2). The county must also withhold the information marked under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.130 of the Government Code, and section 552.147 of the Government Code. The county must release the remaining information.

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).

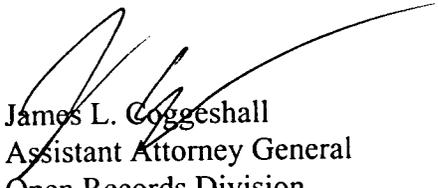
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

Ref: ID# 261307

Enc. Submitted documents

c: Ms. Nicole Porter  
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(w/o enclosures)