



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2006

Ms. Allison Lanty
Assistant District Attorney
25th Judicial District of Texas
113 South River, Suite 205
Seguin, Texas 78155

OR2006-12573

Dear Ms. Lanty:

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# 262839.

The 25th Judicial District Attorney's Office (the "district attorney") received a request for information from grand jury hearings on April 4th and July 28th concerning a named individual. You claim that the requested information is not subject to the Act, or in the alternative is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code. We have considered your claims and reviewed the submitted information.

Initially, we address your claim that the submitted information is not 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* Gov't Code § 552.003(1)(B), 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 not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983). *But see* ORD 513 at 4 (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. *See* ORD 513 at 3. 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 id.* Therefore, to the extent that any portion of the requested information is held by the district attorney as an agent of the grand jury, such information is in the grand jury's constructive possession 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 requested information is not held by the district attorney as an agent of the grand jury, so as to be subject to the Act, we consider your exceptions to disclosure.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 261.201 of the Family Code, which provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state that the submitted information pertains to an investigation into the alleged sexual assault of a child. Based on your representation and our review, we conclude that the submitted information is within the scope of section 261.201. You do not indicate that the district attorney has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Based on this assumption, we conclude that the information at issue is confidential pursuant to section 261.201 of the Family Code, and the district attorney must withhold it under section 552.101 of the Government Code.¹ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, to the extent that the requested information is in the custody of the district attorney as an agent of the grand jury, this information is not subject to the Act. To the

¹ We note that if the investigation has been referred to the Department of Family and Protective Services (the "department"), a parent or other legal representative of a child who is a requestor may be entitled to access to the department's records. *See* Fam. Code § 261.201(g).

extent that the requested information is not held by the district attorney as an agent of the grand jury, this information is confidential under section 261.201 of the Family Code and must be withheld pursuant to section 552.101 of the Government Code. As our ruling is dispositive, we do not address your remaining arguments.

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).

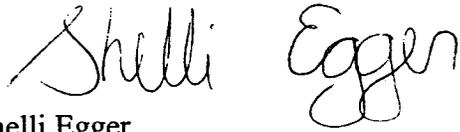
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink that reads "Shelli Egger". The signature is written in a cursive style with a large, looped "E" at the end.

Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 262839

Enc. Submitted documents

c: Ms. Renae F. Harper
414 O'Connor Street
Yoakum, Texas 77995
(w/o enclosures)