



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2007

Mr. David A. Mendoza
Assistant District Attorney
Hays County District Attorney's Office
110 East MLK Boulevard
San Marcos, Texas 78666

OR2007-16105

Dear Mr. Mendoza:

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 #296569.

The Hays County Sheriff's Office (the "sheriff") received a request for all arrest records for a named individual, as well as all booking, release and bail bond records for the same individual. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The sheriff asserts the submitted information is in the actual and constructive possession of a grand jury and therefore is not subject to disclosure under the Act. In this regard, we note that subsection 52.003(1)(B) of the Government Code provides that a "governmental body . . . does not include the judiciary." This office has concluded that grand juries are part of the judiciary for purposes of the Act. *See Open Records Decision No. 398 at 2 (1983).* In Open Records Decision No. 513 (1988), this office concluded that information obtained by a governmental body pursuant to a grand jury subpoena issued in connection with a grand jury investigation is within the grand jury's constructive possession and is not subject to the Act. *See Gov't Code § 552.003.* However, if an investigation began before any information was submitted to the grand jury, and the grand jury did not formally request or direct all of the governmental body's actions in the investigation, then the information is not deemed to be in the grand jury's constructive possession. Open Records Decision No. 513 at 4. The

fact that information collected or prepared by a governmental body is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the governmental body. *Id.*

In this instance, we understand that the information at issue was collected and is maintained by the sheriff in the normal course of business, and that the sheriff later submitted these records to a grand jury. Therefore, we conclude that the submitted information is not in the constructive possession of the grand jury, but rather, constitutes public information subject to disclosure under the Act because the sheriff did not collect the information at the express direction of the grand jury. *See* Gov't Code § 552.002 (defining "public information" for purposes of Act); Open Records Decision No. 398 (1983) (audit prepared at direction of Nueces County Grand Jury held in Grand Jury's constructive possession). Accordingly, we will address your assertion under the Act.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. You assert that all of the submitted information is subject to common-law privacy, and you inform us that the individual who is the subject of the present request is deceased. We note, and you acknowledge, that the common-law right to privacy is a personal right that lapses at death. Therefore, the common-law right to privacy does not encompass information that relates to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, *writ ref'd n.r.e.*); Open Records Decision No. 272 at 1 (1981).

You argue that release of the information at issue would be highly embarrassing to the family of the deceased, and that the responsive information is of no legitimate concern to the public. We note that the information at issue relates solely to a deceased individual and does not reveal highly intimate or embarrassing facts about a living individual. Further, this information pertains to the death of an individual that occurred "as a result of an encounter with law enforcement." We find that such information is of legitimate public interest. Therefore, we find that the information at issue may not be withheld pursuant to section 552.101 in conjunction with common-law privacy. We note, however, that one police report supplement contains information subject to section 552.130 of the Government Code.

Section 552.130 excepts from disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. The Texas issued license plate

number, which we have marked, pertains to an automobile registered to a living individual. Accordingly, this number must be withheld under section 552.130 of the Government Code.

In summary, the Texas issued license plate number that we marked must be withheld under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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, appearing to read "Reg Hargrove", with a long horizontal flourish extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 296569

Enc. Submitted documents

c: Ms. Molly Bloom
Austin American-Statesman
109 East Hopkins Street, Suite 203
San Marcos, Texas 78666
(w/o enclosures)