



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 29, 2012

Mr. Michael Sandlin
Assistant District Attorney
County of Dallas
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4339

OR2012-03158

Dear Mr. Sandlin:

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# 447140.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for the grand jury testimony given by a named officer in a specified cause number involving the requestor. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim. We have also received comments from the requestor. *See* Gov't Code § 552.304 (providing interested party may submit written comments stating why information should or should not be released).

Initially, we note you merely cite to Open Records Decision No. 513, which holds records held by an entity acting as an agent of the grand jury are considered to be records in the constructive possession of the grand jury and therefore not subject to the Act. *See* Open Records Decision No. 513 (1988); *see also* Open Records Decision No. 411 at 2 (1984) (holding grand jury is part of the judiciary and therefore not subject to the Act). However, you do not provide any arguments regarding whether the district attorney's office holds the information at issue as an agent of the grand jury. Accordingly, we have no basis for concluding the information is not subject to the Act.

Next, we must address the district attorney's office's obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You have not submitted the requested information for our review and inform us the district attorney's office was unable to locate the information. Accordingly, we find the district attorney's office failed to comply with section 552.301(e) of the Government Code.

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 id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

You raise section 552.101 of the Government Code as an exception to disclosure of the requested information. Generally, section 552.101 can present a compelling reason to withhold information. However, because you have not submitted a copy or representative sample of the information at issue for our review, we have no basis for finding any of the requested information confidential by law. Therefore, we must order the district attorney's office to release the information at issue pursuant to section 552.302. If you believe this information is confidential and may not be lawfully released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 447140

Enc. Submitted documents

c: Requestor
(w/o enclosures)