



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 29, 2017

Mr. Ricardo Vela, Jr.  
Assistant District Attorney  
Dallas County District Attorney's Office  
133 North Riverfront Boulevard, LB19  
Dallas, Texas 75207-4399

OR2017-06517

Dear Mr. Vela:

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# 651134.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case. The district attorney's office received a second request for information pertaining to the same specified case and information pertaining to an additional related case. The district attorney's office states it does not have information responsive to portions of the requests.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from one of the requestors. *See Gov't Code § 552.304*

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We note the district attorney's office did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See Gov't Code § 552.301(b)*. Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

(permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note the submitted information may be records of a grand jury. The judiciary is expressly excluded from the requirements of the Act. *Id.* § 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. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that 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. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, the submitted information that is held by the district attorney's office as an agent of the grand jury consists of records of the judiciary not subject to disclosure under the Act, and we do not address its public availability. To the extent the submitted information is not held by the district attorney's office as an agent of the grand jury, we will address your argument against disclosure of the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses article 20.02(a) of the Code of Criminal Procedure, which provides "[t]he proceedings of the grand jury shall be secret." Crim. Proc. Code art. 20.02(a). In construing article 20.02 of the Code of Criminal Procedure, the types of "proceedings" Texas courts have generally stated are secret are testimony presented to the grand jury and the deliberations of the grand jury. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, orig. proceeding). The submitted information consists of a transcript of the testimony of a grand jury witness. Therefore, the submitted information is confidential under article 20.02(a) of the Code of Criminal Procedure and the district attorney's office must withhold it under section 552.101 of the Government Code on that ground. *See* Open Records Decision No. 513 at 4 (1988) (information must be withheld if its release would reveal grand jury's deliberations).

In summary, to the extent the submitted information is held by the district attorney's office as an agent of the grand jury, it consists of records of the judiciary and is not subject to disclosure under the Act. To the extent the submitted information is not held by the district attorney's office as an agent of the grand jury, the submitted information is confidential under article 20.02(a) of the Code of Criminal Procedure and the district attorney's office must withhold it under section 552.101 of the Government Code on that ground.

The district attorney's office asks this office to issue a previous determination that would permit the district attorney's office to withhold from disclosure information made confidential under section 20.02(a) of the Code of Criminal Procedure without the necessity of requesting a decision under section 552.301 of the Government Code. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the

particular information at issue in these requests 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive style with a large, looping initial "P".

Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/nmd

Ref: ID# 651134

Enc. Submitted documents

c: Requestors  
(w/o enclosures)