



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2017

Mr. Ricardo Vela, Jr.
Assistant District Attorney
Dallas County District Attorney's Office
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2017-23114

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# 680628.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for information pertaining to the grand jury for a specified cause number.¹ You state the district attorney's office does not have information responsive to a portion of the request.² You claim the submitted information is excepted from disclosure under section 552.101 of

¹You state the district attorney's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.³

Initially, we note the submitted information may be records of a grand jury. 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. *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 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 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). You state the submitted information consists of the transcript of the entire proceeding before a grand jury on a certain date as it was recorded by a grand jury stenographer. Further, you state this information includes any witness testimony and evidence presented to the grand jury at issue during the proceedings. Based on your representations, we find 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 district attorney's office must withhold it

³We assume 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 those records contain substantially different types of information than that submitted to this office.

under section 552.101 of the Government Code in conjunction with article 20.02(a) of the Code of Criminal Procedure.

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.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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 680628

Enc. Submitted documents

c: Requestor
(w/o enclosures)