



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 3, 2019

Ms. June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2019-27786

Dear Ms. Harden:

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# 788057 (PIR No. R001773).

The Office of the Attorney General (the "OAG") received a request for indictments pertaining to a named individual from a specified date. The OAG claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception reviewed the submitted information.

Initially, we note the submitted information consists of a grand jury indictments. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the Act, a grand jury 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 are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411,398 (1983). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. 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* ORD 513. Thus, to the extent the OAG holds the information at issue solely

as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the OAG is not required to release that information in response to the instant request. To the extent the OAG holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address the claimed exception.

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he 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, and we agree, the submitted information was used and developed in investigations of alleged or suspected child abuse or neglect conducted by the OAG’s Criminal Prosecutions Division. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to section 261.201 of the Family Code. You state the OAG has not adopted a rule that governs the release of this type of information. Therefore, we conclude the OAG must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, to the extent the OAG holds the submitted information solely as an agent of the grand jury, the OAG is not required to release that information in response to the instant request. Alternatively, the OAG must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Paige Thompson".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 788057

Enc. Submitted documents

c: Requestor
(w/o enclosures)