



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2022

Ms. Laura Anne Coats
Assistant District Attorney
Dallas County
Frank Crowley Courts Building
133 North Riverfront Boulevard, LB 19
Dallas, Texas 75207-4399

OR2022-00776

Dear Ms. Coats:

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# 924252.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for certain information pertaining to two specified cause numbers. You state the district attorney's office has released some information to the requestor. You claim some of 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.

Initially, we note the submitted information consists of grand jury assignments and grand jury testimony. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined, for the 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). Furthermore, 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 district attorney's

office 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 district attorney's office is not required to release that information in response to the instant request.¹ To the extent the district attorney's office does not hold the information at issue solely as an agent of the grand jury, the information is subject to the Act and must be released unless it falls within an exception to disclosure.

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 20A.202(a) of the Code of Criminal Procedure, which provides "[g]rand jury proceedings are secret."² Crim. Proc. Code art. 20A.202(a). However, article 20A.202 does not define "proceedings" for purposes of subsection (a). The Fourth Court of Appeals in *In re Reed* addressed the issue of what constitutes "proceedings" for purposes of the statutory predecessor to article 20A.202(a) and stated the term "proceedings" could "reasonably be understood as encompassing matters that take place before the grand jury, such as witness testimony and deliberations." *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, orig. proceeding). You state the information submitted as Exhibit C consists of transcripts of grand jury testimony. Upon review, we agree the information at issue consists of grand jury testimony made confidential under article 20A.202(a) of the Code of Criminal Procedure, and the district attorney's office must withhold Exhibit C under section 552.101 of the Government Code on that basis. *See* ORD 513 at 4 (information must be withheld if its release would reveal grand jury's deliberations).

In summary, to the extent the district attorney's office 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 district attorney's office is not required to release that information in response to the instant request. To the extent the district attorney's office does not hold the information at issue solely as an agent of the grand jury, the district attorney's office must withhold Exhibit C under section 552.101 of the Government Code in conjunction with article 20A.202(a) of the Code of Criminal Procedure and release the remaining information.

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

¹ In that instance, as we are able to make this determination, we need not address your argument against disclosure of this information.

² We understand you to raise article 20A.202, rather than the former article 20.02 of the Code of Criminal Procedure.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 924252

Enc. Submitted documents

c: Requestor
(w/o enclosures)