



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 23, 2022

Ms. Jacqueline Villarreal
Assistant District Attorney
Hidalgo County
100 East Cano Street
Edinburg, Texas 78539

OR2022-05452

Dear Ms. Villarreal:

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# 932669 (File No. 2021-0204-DA).

The Hidalgo County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to two specified cause numbers involving the requestor's client. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1315, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the information at issue includes a grand jury indictment. 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 Decision 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

¹ We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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 grand jury indictment 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 present request.² To the extent the district attorney's office holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address your arguments against 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 section 261.201(a) of the Family Code, which provides as follows:

[T]he following information is confidential, is not subject to public release under [the Act], 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). Upon review, we find the submitted information was used or developed in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201). Thus, the information is within the scope of section 261.201 of the Family Code. The district attorney's office does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Accordingly, the district attorney's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, to the extent the district attorney's office holds the grand jury indictment 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 present request. The district attorney's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

² In that instance, as we are able to make this determination, we need not address your arguments against disclosure of this information.

³ As our ruling is dispositive, we do not address the other arguments of the district attorney's office to withhold this 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 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jxd

Ref: ID# 932669

Enc. Submitted documents

c: Requestor
(w/o enclosures)