

NO. 366-02630-2010

IN RE: GRAND JURY
PROCEEDINGS

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IN THE DISTRICT COURT

366TH JUDICIAL DISTRICT

COLLIN COUNTY, TEXAS

JANUARY - JUNE TERM 2010

MOTION TO QUASH ILLEGALLY RE-ASSEMBLED GRAND JURY

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the Honorable Suzanne H. Wooten, Movant, through her counsel PETER A. SCHULTE, and brings this Motion to Quash Illegally Re-Assembled Grand Jury and in support thereof shows:

I. FACTUAL BACKGROUND

1. The Movant in this case, Judge Suzanne Wooten, is currently the presiding judge of the 380th Judicial District Court of Collin County, Texas.
2. Movant was elected to this position on November 4, 2008 after defeating incumbent Judge Charles Sandoval in the March 2008 Collin County Republican Party Primary.
3. That is the first time that a sitting district judge was challenged, let alone defeated, in a primary election in Collin County history. Movant defeated the incumbent Judge by a margin of 57.21 % to 42.79% (with election day votes 60% to 40%).
4. Movant became aware that the day after the election, Judge Charles Sandoval reportedly had a lengthy meeting with executive level members of the Collin County District Attorney's Office. It was told to several individuals that Judge Sandoval believed that the only reason he lost was that the Movant "must have cheated."

2010 JUN 29 PM 2:00

[Handwritten signature]

5. Shortly after this meeting between Sandoval and the District Attorney's Office, Movant became aware (in March 2010) that Judge Curt Henderson issued possibly the first Grand Jury subpoenas related to this investigation in March 2008, just days after the election.
6. In July 2009, Movant discovered through the "rumor mill" of Collin County that she might be the target of a grand jury investigation being conducted by Christopher Milner, Chief of the Special Crimes Unit of the Collin County District Attorney's Office.
7. Movant's counsel, Peter A. Schulte, contacted Christopher Milner in July of 2009, offering full cooperation by Movant and to provide any documents that Christopher Milner would like produced. Christopher Milner stated to Mr. Schulte at the time that "these types of investigations have a tendency to blow over, so we'll let you know."
8. Later in July of 2009, Mr. Schulte again contacted Christopher Milner after courthouse leaks that several grand jury subpoenas had been issued with Movant's name as the subject of a grand jury investigation. Christopher Milner mentioned to Mr. Schulte "election fraud," but refused to state exactly what allegations, if any, they were investigating.
9. In August of 2009, again, with rumors of additional subpoenas issued with Movant's name as the subject of the investigation, Mr. Schulte contacted Christopher Milner to once again offer full cooperation of Movant and to provide any documents he might request. Milner declined to accept such assistance for the third time.

10. In September of 2009, Movant was made aware by her bank that there were “unusual record activities” on her personal, former business, and campaign accounts. Based on this information Movant concluded that there could actually be an investigation pending against her despite Milner’s refusal to admit or deny same.
11. On September 21, 2009, Movant’s attorney Peter A. Schulte submitted a Public Information Act Request (PIA) to the Collin County District Attorney’s Office requesting, among other things, any complaints that may have been filed with the DA’s office regarding Movant’s 2008 Judicial Campaign (copy of which is attached to and incorporated herein by reference as Exhibit “A”).
12. On September 22, 2009, Movant sent a letter to the Grand Jury via Christopher Milner requesting that prior to any consideration of charges that Movant be allowed to present evidence through counsel to the Grand Jury (copy of which is attached to and incorporated herein by reference as Exhibit “B”). It is unclear if this letter, which was hand-delivered on September 23, 2009, was ever actually presented to the members of the Grand Jury by Milner, as Milner stated to Mr. Schulte that he “was not inclined to submit such a letter to the Grand Jury.”
13. Shortly thereafter, Christopher Milner had an additional meeting with Mr. Schulte where Milner stated that he was aware that Mr. Schulte had submitted a Public Information Act request that seemed to be “directly focused on him.” In response, Debra Harrison, chief of the civil division of special crimes for the Collin County District Attorney’s Office, sent a letter to the Attorney General’s Office requesting review of Mr. Schulte’s PIA Request (copy of which is attached

to and incorporated herein by reference as Exhibit "C").

14. On October 1, 2010, after further rumors of additional grand jury subpoenas, Movant's attorney Peter A. Schulte attempted to contact John R. Roach, District Attorney of Collin County, Texas, to arrange a meeting with him and Movant. Roach declined to take Mr. Schulte's call and directed him to Milner.
15. Within seconds of ending the phone call with Roach's assistant on October 1, 2009, Milner called Mr. Schulte on his cell phone and demanded an immediate meeting to discuss Movant's case.
16. Shortly thereafter, on October 1, 2009, Mr. Schulte met with Milner in the Executive Conference Room of the Collin County District Attorney's Office. Milner was observed by Mr. Schulte coming directly out of Roach's office prior to entering the conference room. In this meeting, Milner demanded that Movant resign her bench by the following Wednesday, as "Judge Roach looks favorably upon public servants who accept responsibility for their actions and resign." Mr. Schulte asked Milner if this conversation were "plea negotiations," and he said absolutely not. When Mr. Schulte pushed Milner to state what accusations, if any, were pending against Movant, Milner stated, "She knows what she did." After Mr. Schulte told Milner that he could not advise a sitting district Judge to resign based upon undisclosed allegations, **Milner stated to Mr. Schulte that Movant needed to immediately resign to avoid them "taking her law license, her family, her home, her liberty, and her reputation."** Milner further stated that Movant had been under investigation from "Day 1," that he had boxes upon boxes of evidence, and that regardless of whether or not Judge Wooten resigned,

they would still pursue criminal charges against her. Mr. Schulte immediately told Milner Movant would NOT resign and the meeting concluded.

17. On October 2, 2009, Movant's attorney Mr. Schulte received a letter from the DA's office stating that they would be referring the PIA request to the Attorney General for a ruling on whether such information must be disclosed (again, copy of which is attached to and incorporated herein by reference as Exhibit "C"). On December 10, 2009, Mr. Schulte received the response from the Attorney General's office regarding the Public Information Act Request (copy of which is attached to and incorporated herein by reference as Exhibit "D"). Mr. Schulte later that month received a one page e-mail written by Gregory S. Davis, First Assistant District Attorney, in response to the AG's ruling, with much of the page redacted (copy of which is attached to and incorporated herein by reference as Exhibit "E").
18. Movant was NOT indicted by the 416th grand jury for any wrong-doing by the conclusion of their term.
19. In February of 2010, Movant was informed that the 416th Grand Jurors at the end of their term in December of 2009, demanded that the Movant's case be presented for a vote. Milner refused to present the case and allegedly stated "He was going to wait for a better grand jury."
20. Near the end of June 2010, Movant learned through her attorneys, that another grand jury investigation might possibly be underway at the direction of a representative of the Texas Attorney General's Office. Movant's other attorney, Toby Shook, called the representative from the AG's office, Harry White, an

Assistant Attorney General. White refused to confirm or deny that the Movant was again under investigation. Mr. Shook again offered full cooperation by Movant in this investigation and informed White that such cooperation had been offered numerous times over the last year. White declined at that time.

21. On June 24, 2010, Movant's attorney Peter A. Schulte requested a copy of any Motion or Order signed by Judge Ray Wheless appointing a special prosecutor or prosecutor pro tem on this matter from the Collin County District Clerk's Office. Deputy District Clerk Suzanne Davis stated that no such Order existed and that today, June 24, 2010, was the last day of the 366th Grand Jury. It was later discovered that Harry White was allegedly deputized as an Assistant District Attorney for Collin County, Texas. Therefore, under the law, the Collin County District Attorney's office maintains control over this investigation, contrary to the purported position taken by Roach's office that the AG's office was conducting an independent investigation.
22. On June 28, 2010, AAG Harry White contacted both of Movant's attorneys requesting that Movant appear at an additional Grand Jury session on Wednesday, June 30, 2010, less than 48 hours from the request. During this discussion with White, Mr. Schulte learned that Judge Ray Wheless declined to extend the grand jury on their last session on June 24, 2010. White blamed Judge Ray Wheless for not granting an extension and rushing the investigation of Movant.
23. In addition, Mr. Schulte had a lengthy discussion with White during this same conversation, where White finally stated that the allegation(s) against Movant was possibly a bribery charge. Mr. Schulte stated to White that such allegations were

false and re-iterated how many offers of cooperation were made over the last year. Mr. Schulte then offered an informal meeting with White, an offer he accepted. White refused to be forthcoming with any additional information to help Movant's counsel prepare Movant for such a meeting.

24. As of the date of this filing, Movant has not been notified of any complaints whatsoever filed against Movant with the Texas Ethics Commission regarding these matters. As this Court is aware, the Texas Ethics Commission is the primary investigative body for Election Code violations.
25. Throughout the last year or so, Movant heard many rumors that the District Attorney's office had a special policy regarding handling of criminal cases in Movant's Court because they believed that Movant was "weak" and a "bad judge." This policy was finally confirmed in an e-mail received after Movant's attorney received a fully un-redacted version of the e-mail previously received by Movant's attorney in response to the Public Information Act request. This e-mail, written by First Assistant Gregory S. Davis, clearly outlines a special policy in effect regarding how to handle criminal cases in Movant's Court. This e-mail is attached to and incorporated herein by reference as Exhibit "F"). Movant believes that this e-mail from June 12, 2009 is the basis for the continuing harassment and presentment of this matter to multiple grand juries as an attempt to force Movant from a bench she legitimately was elected to on March 4, 2008.
26. Movant's attorney understands that Judge Ray Wheless discharged the 366th Grand Jury on June 24, 2010, immediately after Judge Wheless denied an extension of a grand jury.

27. On June 28, 2010, in a conversation with Harry White, the AAG apparently handling the investigation, Movant's attorney was told that the Grand Jury asked "what else they could do," and White stated that they could hold another session of the Grand Jury on Wednesday, June 30, 2010, the last day of the term.
28. At the time of this filing, Movant believes that Judge Ray Wheless, the Judge in charge of the 366th Grand Jury, has not re-assembled the Grand Jury pursuant to the Texas Code of Criminal Procedure.

II. AUTHORITIES

29. The court that empanels a grand jury has the authority to quash grand jury subpoenas, compel the testimony of grand jury witnesses, and to aid the grand jury in its investigation. *Ex Parte Edone*, 740 S.W.2d 466, 448 (Tex. Crim. App. 1987).
30. In addition, the "District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body." TEX. CONST. Art. 5 § 8. This jurisdiction includes control and supervision over any Grand Jury impaneled by the District Judge. TEX. CODE CRIM. PROC. Art. 20.15 (Vernon 2010), *Ex Parte Edone* at 447.
31. The District Court that impanels a grand jury exercises such supervisory power over the Grand Jury whether by impaneling, ***re-assembling*** (*emphasis added*), qualifying, quashing subpoenas, or aiding investigation. *Id.* at 448.

32. “A grand jury is clothed with great independence in many areas, *but it remains an appendage of the Court...*” (*emphasis added*). *Id.*
33. Finally, “a grand jury discharged by the Court for the term may be *re-assembled by the Court* (*emphasis added*) at anytime during the term.” TEX. CODE CRIM. PROC. Art. 19.41 (Vernon 2010). An attorney representing the State of Texas does **NOT** have the authority to re-assemble the grand jury without permission from the Court which impaneled the Grand Jury. *Id.*

III. ARGUMENT

34. It is the Movant’s understanding and belief that this current grand jury term is possibly the **FIFTH** grand jury to be used to invade Movant’s private, personal, and professional life for purely political, harassment, and/or intimidation purposes. As shown by the facts herein, no previous grand jury has elected to indict Movant for any crime.
35. Movant has offered time and time again to answer questions related to this investigation over the last year since learning about the investigation. All offers have been refused. It is Movant’s belief that the Collin County District Attorney’s Office continues to pursue such an investigation in an effort to pressure Movant to resign her bench, as demanded on October 1, 2010 by Christopher Milner of the Collin County District Attorney’s Office. This belief was confirmed once Movant’s counsel received Exhibit “F,” the e-mail from First Assistant District Attorney Gregory Davis, earlier this year showing how “unhappy” the Collin County District Attorney’s office was with Movant’s judicial decisions.

36. There is some evidence that Christopher Milner of the Collin County District Attorney's Office refused to present any case against Movant before the 416th Grand Jury that ended in December of 2009. If true, this shows that the State's attorneys handling this investigation continue to "grand jury shop" until they feel they have a grand jury that will indict based on their recommendations alone, absent any real evidence that a crime was actually committed by Movant.
37. The Attorney General's office is not an independent investigative body in this matter. Since there is no Order appointing the Attorney General's office as "Attorney Pro Tem," the authority of the Assistant Attorney General to conduct this investigation can only be provided by him being "deputized" as an Assistant District Attorney for Collin County under the Government Code. Therefore, the District Attorney of Collin County, John R. Roach, maintains complete authority over this investigation.
38. Movant believes that the 366th District Court Grand Jury was discharged by Judge Ray Wheless on June 24, 2010. No Order reassembling the grand jury has been issued by Judge Ray Wheless. TEX. CODE CRIM. PROC. Art. 19.41 (Vernon 2010).
39. Based on conversations with the AAG handling this investigation, Harry White, Movant believes that White is upset and angry at Judge Ray Wheless for exercising his supervisory control over the grand jury contrary to their wishes. Movant believes the unlawful calling of a final session of the 366th Grand Jury on Wednesday, June 30, 2010 by White is in direct retaliation for Judge Ray Wheless's decision to not extend the grand jury.

40. There is no doubt that this investigation began as, and continues to be, a politically motivated investigation. There should be no reason why if a crime was *actually committed* that these facts could not be presented to another grand jury. It is Movant's belief that the reason the State's attorneys are so desperate in using the current 366th Grand Jury to hear this case is that they feel they can persuade them in indicting Movant on any charge they wish to present.

In conclusion, the attorneys representing the State in this case are conducting an investigation with no legitimate law enforcement purpose which is unlawful and perhaps criminal. Proof of such illegitimacy of this investigation is shown by the facts stated herein.

WHEREFORE, PREMISES CONSIDERED, Hon. Suzanne H. Wooten prays that the Court quash the Illegally Re-Assembled Grand Jury *INSTANTER* and to immediately hold any person in Contempt of Court who refuses to obey such Order.

Respectfully submitted,

SCHULTE & APGAR PLLC
4131 N. Central Expressway
Suite 680
Dallas, Texas 75204
Tel: (214) 521-2200
Fax: (214) 739-3234

By: _____


PETER A. SCHULTE

State Bar No. 24044677

Attorney for Hon. Suzanne H. Wooten

CERTIFICATE OF SERVICE

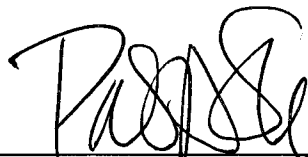
This is to certify that on June 29, 2010, a true and correct copy of the above and foregoing document was served on the following by hand delivery:

Harry White, Esq.

Office of Texas Attorney General
Apparent Special Prosecutor
Austin, Texas
(512) 463-2529

John R. Roach, Esq.

Collin County District Attorney
2100 Bloomdale Rd
McKinney, Texas 75071
(972) 548-4323



PETER A. SCHULTE

ORDER FOR A SETTING

On June 29, 2010, the Movant filed a Motion to Quash and Exception to Form of Indictment. The Court finds that the party is entitled to a hearing on this matter, and it is THEREFORE ORDERED that a hearing on this motion is set for 6/30/10, at 9:00am

Signed on June 29, 2010.



JUDGE PRESIDING

Schulte & Apgar

A Professional Limited Liability Company

Attorneys at Law

4131 N. Central Expwy Ste 680
Dallas, Texas 75204-2171
Office: 214-521-2200
Facsimile: 214-739-3234
www.PeteSchulte.com
pete@schulteapgar.com

September 21, 2009

Via Facsimile Only: 972-548-4709

John R. Roach, Esq., Criminal District Attorney
Collin County, Texas
ATTN: Debbie Harrison, Esq.
2100 Bloomdale Road Ste 20004
McKinney, TX 75071

RE: Public Information Request: September 21, 2009

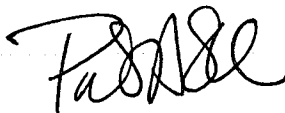
Dear Mr. Roach:

The purpose of this letter is to request the following records, documents, and/or other communication, electronic or otherwise, via the Texas Public Information Act from your office:

1. Any electronic mail or other communication referring to, or referencing "Suzanne Wooten" (or any variation thereof) sent by any employee of the Collin County District Attorney's Office from December 1, 2007 through the present date,
2. Policies or any other memorandum, electronic or on paper, issued by any employee of the Collin County District Attorney's Office regarding practice or procedure in Judge Suzanne Wooten's Court issued March 4, 2008 through the present date, and
3. Any letters, complaints, or other correspondence received by any employee of the Collin County District Attorney's Office regarding Suzanne Wooten's 2008 Judicial Campaign dated January 1, 2008 through the present date.

I request all documents to be provided on paper. Please contact my office once the cost associated with this request is computed so I may remit payment. As you know, this request prompts important statutory deadlines for responding to this request. Please do not hesitate to contact me at 214-521-2200 with any questions.

Sincerely,



Peter A. Schulte, Esq.
SCHULTE & APGAR, PLLC

PAS:ps

Exhibit
"A"

Schulte & Apgar

A Professional Limited Liability Company

Attorneys at Law

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www.PeteSchulte.com
pete@schulteapgar.com

September 23, 2009

Via Hand Delivery

John R. Roach, Collin County District Attorney
ATTN: Chris Milner, Esq.
2100 Bloomdale Road Ste 20004
McKinney, TX 75071

RE: Possible Grand Jury Investigation: Hon. Suzanne H. Wooten

Dear Mr. Milner:

Please find enclosed an original and 12 copies of a letter that was submitted to your office via U.S. Certified Mail, Return Receipt Requested, yesterday, September 22, 2009.

If you choose to present this letter to the Grand Jury as requested by my client, I have enclosed twelve copies as a courtesy.

Please do not hesitate to contact me at 214-521-2200 with any questions.

Sincerely,



Peter A. Schulte, Esq.
SCHULTE & APGAR, PLLC

PAS:ps

SEP 22 2009

Exhibit
"B"

Schulte & Apgar

A Professional Limited Liability Company

Attorneys at Law

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September 22, 2009

Via Hand Delivery

John R. Roach, Collin County District Attorney
ATTN: Chris Milner, Esq.
2100 Bloomdale Road Ste 20004
McKinney, TX 75071

RE: Possible Grand Jury Investigation: Hon. Suzanne H. Wooten

Dear Mr. Milner and Members of the 416th Grand Jury:

I represent the Honorable Suzanne H. Wooten, Judge of the 380th Judicial District Court of Collin County, Texas. The purpose of this letter is to respectfully ask that Mr. Milner present this letter to the honorable members of the Grand Jury regarding a rumored investigation regarding my client's 2008 Judicial campaign.

I have personally spoken with the Mr. Milner who would not confirm or deny an existence of a Grand Jury investigation, however, through the "rumor mill" of the Collin County Courthouse, it has become evident that an investigation is more than likely on-going regarding my client's 2008 Judicial campaign.

My client would like the opportunity to present information through counsel to the Grand Jury prior to any consideration of charges against her by this Grand Jury. Please let my office know when and where I may appear to present such information to the Grand Jury.

Please do not hesitate to contact me at 214-521-2200 with any questions.

Sincerely,



Peter A. Schulte, Esq.
SCHULTE & APGAR, PLLC

PAS:ps



JOHN R. ROACH
CRIMINAL DISTRICT ATTORNEY
COLLIN COUNTY COURTHOUSE
210 S. McDONALD, SUITE 324
MCKINNEY, TEXAS 75069
972-548-4323
METRO 424-1460
FAX NO'S. 972-548-4388/972-548-4565
www.collincountyda.com

October 1, 2009

CERTIFIED MAIL:

Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for Open Records Opinion

Dear Attorney General Abbott:

On September 21, 2009, the Collin County District Attorney's Office received a public information request from Peter A. Schulte, requesting the following records: (1) Any electronic mail or other communication referring to, or referencing "Suzanne Wooten" (or any variation thereof) sent by any employee of the Collin County District Attorney's Office from December 1, 2007 through the present date; (2) Policies or any other memorandum, electronic or on paper, issued by any employee of the Collin County District Attorney's Office regarding practice or procedure in Judge Suzanne Wooten's Court issued March 4, 2008 through the present date, and; (3) Any letters, complaints, or other correspondence received by any employee of the Collin County District Attorney's Office regarding Suzanne Wooten's 2008 Judicial Campaign dated January 1, 2008 through the present date. On September 23, 2009, I requested a clarification/narrowing of the first request to exclude communications that only discussed routine court business. The requestor agreed by email the same day. I conducted a diligent search for any records that matched the requests made by the requestor, contacting members of the D.A.'s Office as well as having our Information Technology Department conduct a search. It is our position that these records are either privileged or fall under certain exceptions to the Public Information Act. Specifically we believe that the requested records are excepted from required public disclosure under the following provisions of the Texas Government Code:

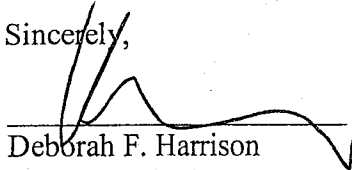
Exhibit
"C"

- 1) Section 552.101 & Texas Code of Criminal Procedure 20.02
- 2) Section 552.103
- 3) Section 552.108
- 4) Section 552.111

Accordingly, we respectfully request an Open Records Opinion from your office to determine if the requested information is subject to required public disclosure under the Public Information Act.

We will submit the additional information required by Texas Government Code Section 552.301 (e) to you in a timely manner. Notice of this request is also being sent to the requestor in compliance with Texas Government Code Section 552.301(d). Thank you for your time and consideration.

Sincerely,



Deborah F. Harrison
Assistant District Attorney
Special Crimes Division-Civil Section
Bar Number: 00790829

cc: Peter A. Schulte

enclosures



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2009

Ms. Deborah F. Harrison
Assistant District Attorney
Special Crimes Division - Civil Section
210 South McDonald, Suite 324
McKinney, Texas 75069

OR2009-17386

Dear Ms. Harrison:

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# 363957.

The Collin County District Attorney's Office (the "district attorney") received a request for any communications sent by an employee of the district attorney to or referencing a named judge from December 2007 until the date of the request, any policies and memorandum issued by an employee of the district attorney regarding practice and procedure in the named judge's court, and any correspondence received by an employee of the district attorney regarding the named judge's judicial campaign from January 2008 until the date of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the submitted documents in section IIC(1), which we have marked, are not responsive to the instant request for information because they were created after the date that the district attorney received the request. This ruling does not address such non-responsive information and the district attorney need not release it in response to this request.

You raise section 552.108 of the Government Code for the records in IIA, IIC(1), and IIC(2). Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement

¹We note that the district attorney asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see also Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification). We further note that, regarding the first category of the request, the requestor agreed to exclude communications between an employee of the district attorney to or referencing the named judge that only discuss routine court business.

Exhibit
"D"

agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have submitted an affidavit stating that the information at issue relates to an ongoing grand jury investigation and possible criminal prosecution. Based on this representation, and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to the information in IIA, IIC(1), and IIC(2). *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the district attorney may withhold the information in IIA, IIC(1), and IIC(2) under section 552.108(a)(1) of the Government Code.²

You assert that the information in IIB is a policy e-mail that is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. This section encompasses the deliberative process privilege. *See Open Records Decision No. 615 at 2* (1993). In *Open Records Decision No. 615*, this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *see also Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). The purpose of section 552.111 is “to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes.” *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.).

An agency’s policymaking functions do not encompass internal administrative or personnel matters. Disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *See ORD 615 at 5-6*. However, a governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See Open Records Decision No. 631 at 3* (1995). Further, a preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document.

²As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure of the information in IIA, IIC(1), and IIC(2).

See Open Records Decision No. 559 at 2 (1990). Section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See ORD 615 at 5. But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

You state that the information in IIB consists of the advice, opinions, and recommendations of the district attorney. You assert this information involves policymaking matters related to the subject of the request and for an unrelated court and case. Based on your arguments and our review, we agree that some of the information consists of the advice, opinions, or recommendations of the district attorney regarding policymaking matters, and the district attorney may withhold the information we have marked in IIB under section 552.111 of the Government Code. However, you have not demonstrated how the remaining information at issue consists of advice, opinions, or recommendations about a policymaking decision. Therefore, the district attorney may not withhold any portion of the remaining information under section 552.111 of the Government Code.

In summary, the district attorney may withhold the information in IIA, IIC(1), and IIC(2) under section 552.108(a)(1). The district attorney may withhold the information we have marked in IIB under section 552.111 of the Government Code. The remaining information in IIB must be released.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg



JOHN R. ROACH
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December 16, 2009

CERTIFIED MAIL:

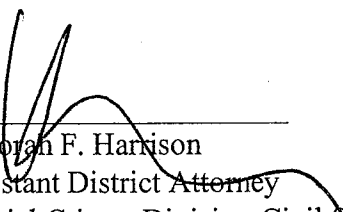
Peter Schulte
Attorney At Law
4131 N. Central Exwy., Ste 680
Dallas, TX 75024-2171

RE: Public Information Act Request OR2009-17386

Dear Mr. Schulte:

Enclosed please find the record which the Attorney General's Office directed us to release to you pursuant to OR2009-17386. It has been redacted pursuant to the instructions in the Attorney General's opinion.

Sincerely,


Deborah F. Harrison
Assistant District Attorney
Special Crimes Division-Civil Section
SBN 00790829

Enclosure

Exhibit
"E"

Ref: ID# 363957

Enc. Submitted documents

c: Requestor
(w/o enclosures)

II B

Gregory Davis

From: Gregory Davis
Sent: Friday, June 12, 2009 10:34 AM
To: Ben Smith
Cc: John Roach
Subject: 380th District Court

[552.111]

Ben,

Finally, I want to congratulate you and Linda Kirklen on an outstanding job in this week's mortgage fraud trial. I know that case was not a clear-cut winner when the week began, and I commend you for your willingness to go to trial and your creativity during trial.

Gregory S. Davis
First Assistant District Attorney
Collin County, Texas
davisgrego@co.collin.tx.us

9/24/2009

Sent: Friday, June 12, 2009 10:34 AM
To: Ben Smith
Cc: John Roach
Subject: 380th District Court

Ben,

It is my understanding that Judge Wooten heard a TBC yesterday, and after both sides rested and closed, initially found the defendant guilty – but at the urging of the defense attorney, withdrew her finding of guilt and placed the defendant on deferred adjudication. If this is true, consult appellate as I believe that judgment is void since the defendant's plea was "not guilty".

I am instructing you to conduct a TBC in the 380th only if you have no interest in the outcome of the case and a TBC is the only way to reasonably dispose of the case. I am also instructing you to use the same guidelines for open pleas in that court. Those same guidelines are to be used in the 429th as well.

As a reminder, you have the authority to plead any case that was set for trial when it was transferred into the 429th. I encourage you to review these cases and make every attempt to plead at least 50 of the 140+ cases currently set for trial in that court. See me if I can assist with reductions, etc.

Finally, I want to congratulate you and Linda Kirklen on an outstanding job in this week's mortgage fraud trial. I know that case was not a clear-cut winner when the week began, and I commend you for your willingness to go to trial and your creativity during trial.

Gregory S. Davis
First Assistant District Attorney
Collin County, Texas
davisgrego@co.collin.tx.us

Exhibit
"F"