OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

May 1, 2001

Ms. Margaret Lalk
Assistant District Attorney
Brazos County
300 E. 26th Street, Suite 310
Brazos County Courthouse
Bryan, Texas 77803

OR2001-1772

Dear Ms. Lalk:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146609.

The Brazos County District Attorney's Office (the "district attorney") received two requests from the same requestor for the Texas Rangers' investigation report concerning the death of a named individual at the Mansfield boot camp. You claim that some of the submitted information is not subject to the Public Information Act (the "Act") pursuant to section 552.003 of the Government Code, and that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.[1]

First, you contend that certain information in Exhibit B was obtained pursuant to a grand jury subpoena and is therefore not subject to the Act. Because grand juries are extensions of the judiciary for purposes of the Act, the Act does not apply to information within the actual or constructive possession of a grand jury. Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information prepared or collected by the agent is within the grand jury's constructive possession. *Id.* Information not held or maintained by the district attorney in this manner is not exempt from coverage of the Act and may be withheld only if one of the Act's specific exceptions applies to the information. *Id.* You provide a copy of a grand jury subpoena and a listing of the

[1]We are informed that the submitted information is a representative sample of the responsive information. We assume that this "representative sample" 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.

information the district attorney obtained pursuant to the subpoena in Exhibit B-2. Based on your representations, we conclude that any documents in Exhibit B that were obtained pursuant to the grand jury subpoena are not subject to the Act and need not be released.

We will now address your claimed exceptions with respect to the remaining responsive information. We note that the Texas Rangers' investigation report is a completed investigation, and normally must be released pursuant to section 552.022(a)(1) of the Government Code. Section 552.022 makes "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" public information unless expressly made confidential under other law or "except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1).

You contend that the information in Exhibits B and B-1 is excepted from disclosure under section 552.108(a)(1) of the Act. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You inform us that the requested information relates to an incident presently under grand jury investigation. Based upon this representation, we conclude that the release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *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).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *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). Thus, with the exception of the basic front page offense and arrest information, you may withhold the remaining information in Exhibits B and B-1 from disclosure based on section 552.108(a)(1).[2]

Finally, we note that the submitted materials include a copy of an autopsy report. Section 11 of article 49.25 of the Code of Criminal Procedure provides as follows:

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[2]Because section 552.108 is dispositive of this matter, we do not address your arguments regarding sections 552.101 and 552.103 except to note that, like section 552.108, section 552.103 does not except front page offense report information. *See* Open Records Decision Nos. 362 (1983), 597 (1991).

> The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:
>
> (1) under a subpoena or authority of other law; or
>
> (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Code Crim. Proc. art. 49.25, § 11. Pursuant to section 11, an autopsy report is a public record and must be released to the requestor. We have marked the autopsy information that must be released.

To summarize, we conclude that: (1) any documents in Exhibit B that were obtained pursuant to the grand jury subpoena in Exhibit B-2 are not subject to the Act and need not be released; and (2) the district attorney may withhold the remaining information in Exhibits B and B-1 under section 552.108(a)(1), with the exception of basic information and the autopsy report, which must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/rr

Ref: ID# 146609

Encl.: Submitted documents

cc: Mr. Bob Schober, Reporter
Arlington Morning News
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(w/o enclosures)