



OFFICE of *the* ATTORNEY GENERAL
GREG ABBOTT

July 28, 2003

Chief Don Hatcher
Leander Police Department
P. O. Box 319
Leander, Texas 78646-0319

OR2003-5154

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184902.

The Leander Police Department (the "department") received a request for information pertaining to a specified case. You state that some responsive information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that portions of the submitted information may be grand jury records that are not subject to the Public Information Act (the "Act"). Article 20.02(a) of the Code of Criminal Procedure provides that "[t]he proceedings of the grand jury shall be secret." This office has concluded that grand juries are not subject to the Act and that records that are within the constructive possession of grand juries are not public information subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *See id.* Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *See id.* Thus, to the extent that portions of the submitted information are in the custody of the department as agent of the grand jury, such information is in the constructive possession of the grand jury and is therefore not subject to disclosure under the Act. However, to the extent that the submitted

information is not in the custody of the department as agent of the grand jury, we will address your claims regarding public disclosure of this information.

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 state that the information at issue relates to a pending criminal 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).

We note, however, that basic information normally found on the front page of an offense report is generally considered public. *See generally* Gov’t Code § 552.108(c); 531 S.W.2d 177; Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). We believe such basic information refers to the information held to be public in *Houston Chronicle*, and includes the name, age, address, race, sex, occupation, alias, and physical condition of the arrested person, the identification and description of the complainant, and the location of the crime and premises involved, but does not include drivers license numbers. *See* 531 S.W.2d 177, ORD 127. Thus, you must release the types of information that are considered to be basic front page offense report information, even if this information is not actually located on the front page of the offense report. You state that you have released “front page” information, but the information you released does not include a detailed description of the offense. *Houston Chronicle* requires you to include a detailed description of the offense in the basic front page offense report information that you release. Although section 552.108(a)(1) authorizes the department to withhold the remaining information from disclosure, the department may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

In summary, to the extent that portions of the submitted information are in the custody of the department as agent of the grand jury, such information is in the constructive possession of the grand jury and is therefore not subject to disclosure under the Act. However, to the extent that the submitted information is not in the custody of the department as agent of the

grand jury, the department may withhold this information pursuant to section 552.108(a)(1), with the exception of basic information which must be released to the requestor.¹

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 Dep't of Pub. 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 Texas Building and Procurement Commission at (512)475-2497.

¹As section 552.108 is dispositive, we do not address your remaining claims.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 184902

Enc. Submitted documents

c: Ms. Debora L. Brown
1305 Roadrunner Drive
Cedar Park, Texas 78613
(w/o enclosures)