



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 27, 2004

Ms. Courtney Alvarez  
City Attorney  
City of Kingsville  
P.O. Box 1458  
Kingsville, Texas 78364

OR2004-4342

Dear Ms. Alvarez:

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# 202883.

The City of Kingsville (the "city") received two requests for information pertaining to particular incidents. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

Initially, we note that some of the submitted information appears to have been obtained pursuant to a grand jury subpoena and therefore constitutes records of the grand jury. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within their actual or constructive possession are not subject to disclosure under the Act. *See* Gov't Code §§ 552.003(1)(B), .0035(a); *see also* Open Records

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<sup>1</sup>Although you also raised section 552.101 as a possible exception to disclosure, you have not indicated that any of the submitted information falls within this exception and have provided no arguments regarding such exception. We therefore assume you are no longer claiming this exception. *See* Gov't Code § 552.301.

<sup>2</sup>We note that the information at issue is subject to a previous ruling from this office. *See* Open Records Letter No. 2004-4340 (2004). However, in this instance, you do not make the same arguments regarding the information as you did previously. We therefore understand you to represent that the circumstances surrounding that ruling have changed and thus find that our prior ruling does not serve as a previous determination in this instance. *See* Open Records Decision No. 673 at 6-7 (2001) (criteria of previous determination regarding specific information previously ruled on).

Decision Nos. 513 (1988); 398 at 2 (1983) (grand jury is part of judiciary for purposes of predecessor to Act). 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 chapter 552. Open Records Decision No. 513 at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld from disclosure only if a specific exception to disclosure is applicable. *Id.* However, "the fact that information collected or prepared by the district attorney is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney." *Id.* In this instance, we are unable to determine whether the city maintains the requested information on its own behalf or as an agent of the grand jury. Therefore, to the extent the submitted information is maintained by the city for or on behalf of the grand jury, it is in the custody of the city as agent of the grand jury and not subject to disclosure under the Act. To the extent that it is not so maintained, it is subject to the Act and may be withheld only if an exception under the Act is shown to apply. As we are unable to determine the extent to which the submitted information is maintained for or on behalf of the grand jury, we will also address the exceptions that you claim under the Act for this information.

We next note that the submitted information includes a "Texas Peace Officer's Accident Report." Section 550.065(b) of the Transportation Code states that it "applies only to information that is held by the [Department of Public Safety] or another governmental entity and relates to a motor vehicle accident reported under [chapter 552] or Section 601.004 [of the Transportation Code.]" This section states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident, (2) the name of any person involved in the accident, and (3) the specific location of the accident. *See* Transp. Code § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.*

Both requestors have provided the city with at least two of the three listed pieces of information. Therefore, the city must release an unredacted copy of the "Texas Peace Officer's Accident Report" to these requestors. *See* Open Records Decision No. 525 (1989) (exceptions found in predecessor to Act do not, as general rule, apply to information that is made public by other statutes).

We turn now to your arguments regarding the remaining submitted information. Section 552.108 of the Government Code provides in part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2). Generally speaking, subsection 552.108(a)(1) is mutually exclusive of subsection 552.108(a)(2). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. In contrast, subsection 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. 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 Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. See Gov't Code §§ 552.108(a)(2), .301(e)(1)(A).

You indicate that the submitted information pertains to a pending criminal investigation by the city's police department. Based on your representations and our review of the submitted information, we conclude that section 552.108(a)(1) is applicable to this information. 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 does not except from disclosure 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*, including a detailed description of the offense. See 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, the city must release the types of information that are considered to be front page information, including a detailed description of the offense, even if this information is not actually located on the front page of an offense report. Pursuant to section 552.108(a)(1), the city may withhold the remaining submitted information from disclosure.<sup>3</sup>

In summary, to the extent the submitted information is maintained by the city for or on behalf of the grand jury, it is in the custody of the city as agent of the grand jury and not subject to

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<sup>3</sup>Because of our ruling on section 552.108, we need not address your arguments regarding section 552.103 except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. See Open Records Decision No. 597 (1991) (predecessor statute).

disclosure under the Act. To the extent that it is not so maintained, it is subject to the Act and may be withheld only if an exception under the Act is shown to apply. In accordance with section 550.065, the city must release an unredacted copy of the "Texas Peace Officer's Accident Report" to each requestor. Other than basic information, the remaining submitted records may be withheld pursuant to section 552.108(a)(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).

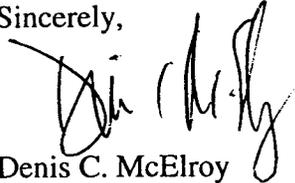
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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.

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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/krl

Ref: ID# 202883

Enc. Submitted documents

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