



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 16, 2004

Ms. Laura Garza Jimenez  
Nueces County Attorney  
County of Nueces  
901 Leopard, room 207  
Corpus Christi, Texas 78401-3680

OR2004-6951

Dear Ms. Jimenez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207207.

The Nueces County Sheriff's Department (the "sheriff") received a request for "all documents (including witness statements, letters, memoranda, and reports) relating to [certain specified] investigation files concerning injuries and/or death of [a named individual]." You claim that the requested information is not subject to the Public Information Act (the "Act"). In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your assertion that the submitted documents "are presently in the actual possession of the Federal Bureau of Investigation as the grand jury's agent pursuant to the grand jury subpoena" and therefore do not constitute public information subject to the Act.<sup>1</sup> You do not, however, inform us that the submitted documents are presently in the possession of the *sheriff* as the grand jury's agent. Because the sheriff does not hold the submitted

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<sup>1</sup>This office has concluded that a grand jury is not a governmental body that is subject to the Act, chapter 552 of Government Code, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. See Gov't Code § 552.003(1)(B) (definition of governmental body does not include the judiciary); Open Records Decision No. 513 at 3 (1988) (information held by grand jury, which is extension of judiciary for purposes of Act, is not itself subject to Act).

documents as agent of the grand jury, the submitted documents are not in the constructive possession of the grand jury but rather in the actual possession of the sheriff. Accordingly, we will address your alternative arguments for the submitted information.

The submitted documents contain a custodial death report. In Open Records Decision No. 521 at 5 (1989), this office concluded that under article 49.18(b) of the Code of Criminal Procedure, in conjunction with a directive issued by the attorney general, section one of a custodial death report filed with this office is public information, but sections two through five of the report are confidential. *See* Code Crim. Proc. art. 49.18(b) (attorney general shall make report, with exception of any portion of report that attorney general determines is privileged, available to any interested person). Accordingly, the sheriff must release section one of the custodial death report to the requestor. However, because sections two through five of the report are deemed confidential under article 49.18(b), the sheriff must not release the remaining portions of this report to the requestor.

You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from required public disclosure “[i]nformation held by a law enforcement 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 that claims an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that the submitted information relates to an ongoing investigation being conducted by the Federal Bureau of Investigation and the United States Attorney. In correspondence with this office, the Assistant United States Attorney In Charge for the Southern District of Texas objects to the release of the requested information, contending that its disclosure would compromise his office’s ongoing criminal investigation. Based on the information provided and our review of the remaining submitted information, we find that the release of the remaining submitted information would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1); *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); *see also* Open Records Decision Nos. 586 (1991) (need of another governmental body to withhold information may provide compelling reason for nondisclosure), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked by any proper custodian of information which relates to incident). Thus, the remaining submitted information may be withheld under section 552.108. As our ruling on this issue is dispositive, we need not address your remaining arguments.

In summary, we conclude that the sheriff must release section one of the custodial death report to the requestor. The remaining submitted information may be withheld under section 552.108 of the Government Code.

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,

A handwritten signature in black ink, appearing to read 'Sarah I. Swanson', with a long horizontal flourish extending to the right.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/krl

Ref: ID# 207207

Enc. Submitted documents

c: Mr. Christopher J. Gale  
Attorney at Law  
Gale, Wilson & Sanchez  
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San Antonio, Texas 78205  
(w/o enclosures)