



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2005

Ms. Betty McMenemy
City Secretary
City of Parker
5700 East Parker Road
Parker, Texas 75002

OR2005-05622

Dear Ms. McMenemy:

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# 226861.

The Parker Police Department (the "department") received a request for any and all documents related to an assault investigation. You state that you have released the incident report pertaining to the offense at issue, but you claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered arguments submitted to this office by the Collin County District Attorney's office (the "D.A."). *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that a portion of the submitted information constitutes grand jury records that are not subject to the Act. This office has concluded that grand juries are part of the judiciary and are, thus, not subject to the Act. *See* Gov't Code § 552.003 ("governmental body" does not include judiciary). Records that are within the constructive possession of grand juries are not public information that is 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.* We note that a portion of the submitted information was obtained by the department through the use of grand jury subpoenas, which have been included with the submitted documents. Thus, we understand that the department is holding these records as an agent of the grand jury. Accordingly, the information we have marked is in constructive possession of the grand jury and is therefore not subject to disclosure under the Act.

Section 552.108 of the Government Code provides the following:

(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;

(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;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution

Gov't Code § 552.108. A governmental body claiming section 552.108(a)(1) or 552.108(b)(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), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The D.A. has briefed this office and states that release of the requested information would interfere with a case that is currently pending with the D.A.'s office. Based upon this representation and our review, we determine that release of the submitted information would interfere with the detection, investigation, or prosecution of crime.¹ *See Houston Chronicle Publ'g Co. v. City*

¹We note that the D.A. has submitted information to this office to be ruled upon that it states is contained in its files and that it believes to be responsive to the request. However, this ruling is limited to the information submitted as responsive to the request by the department, which is the governmental body that received the request for information. *See* Gov't Code §§ 552.301(a), (e)(1)(D).

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 therefore conclude that section 552.108(a)(1) is applicable to the remaining submitted information, and it may be withheld from disclosure under this exception.²

In summary, the marked grand jury records in the custody of the department as agent of the grand jury are not subject to the Act pursuant to section 552.003 of the Government Code. The remaining information submitted by the department may be withheld under section 552.108(a)(1). As our ruling on this issue is dispositive, we need not address your remaining arguments.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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

²We note that the department has released the incident report to the requestor. We conclude, therefore, that the department has complied with the required release of basic information pursuant to section 552.108(c).

body. *Id.* § 552.321(a); *Tex. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/EAS/krl

Ref: ID#226861

Enc. Submitted documents

c: Mr. Hal K. Gillespie
Gillespie, Rozen, Watsky, Motley & Jones, P.C.
3402 Oak Grove Avenue, Suite 200
Dallas, TX 75204
(w/o enclosures)

Ms. Deborah F. Harrison
Assistant District Attorney
Collin County Courthouse
210 S. McDonald, Suite 324
McKinney, TX 75069