



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2005

Ms. Holly Lytle
Assistant County Attorney
El Paso County Texas
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2005-08668

Dear Ms. Lytle:

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# 232916.

The 34th Judicial District Attorney's Office (the "office") received a request for documents concerning a specific case. You state that you have released some of the requested material, but that you are submitting representative samples of requested information which you claim is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.130 and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we address your representation that the information in Exhibit D consists of grand jury records. This office has concluded that grand juries are not governmental bodies that are subject to chapter 552 of the Government Code, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under chapter 552. 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 chapter 552. *Id.* at 3.

¹We assume that the sample of records submitted to this office 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 that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* Based on your representation that the documents contained in Attachment D consist of medical records obtained by way of a Grand Jury Subpoena, we conclude that this information is in the possession of the office as agent of the grand jury and is therefore not subject to release under the Act.

We also note that the submitted information in Attachment I contains court records subject to section 552.022 of the Government Code. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under chapter 552 of the Government Code unless they are expressly confidential under other law. One such category is “information that is also contained in a public court record[.]” Gov’t Code § 552.022(a)(17). This information must be released under section 552.022(a)(17), unless the information is expressly confidential under other law. Although you assert this information is excepted under sections 552.103 and 552.108, these sections are discretionary exceptions within chapter 552 of the Government Code and not other law that makes information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n. 5 (2000) (discretionary exceptions generally). Therefore, these court-filed documents may not be withheld under sections 552.103 or 552.108. Section 552.101, however, excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. We therefore address the applicability of section 552.101 to the public court records.

Some of the court-filed documents contain fingerprint information. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). Upon review, we find section 560.002 does not permit the disclosure of the submitted fingerprint information in this instance. Therefore, the office must withhold the fingerprint information we have marked in the submitted court records pursuant to section 552.101 in conjunction with section 560.003 of the Government Code. The remainder of the court-filed documents we have marked must be released to the requestor.

Next, we address the remaining submitted 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 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 submitted documents relate to a pending criminal case. Based upon your representation, we conclude that the release of the submitted materials 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 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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, the office may withhold the requested information from disclosure based on section 552.108(a)(1). We note that the office has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the documents contained in Attachment D consist of medical records obtained by way of a Grand Jury Subpoena, and are therefore not subject to release under the Act. The documents we have marked in Attachment I are court records and must be released pursuant to section 552.022 of the Government Code, however, the marked fingerprint information must be withheld under section 552.101 in conjunction with section 560.003 of the Government Code. With the exception of the basic front page offense and arrest information, the office may withhold the remaining requested information from disclosure based on section 552.108(a)(1).²

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

²Because our ruling is dispositive, we need not address your remaining arguments.

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 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 Office of the Attorney General 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,



Elizabeth C. Reeder
Assistant Attorney General
Open Records Division

ECR/sdk

Ref: ID#232916

Enc. Submitted documents

c: Mr. Grant T. McFarland
Prichard, Hawkins, McFarland & Young
10101 Reunion Place, Suite 600
San Antonio, Texas 78216
(w/o enclosures)