



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2006

Ms. Cary Grace
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR2006-03052

Dear Ms. Grace:

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# 244988.

The City of Austin Fire Department (the "department") received a request for a specified offense report. You state that some of the requested information has been released. You claim that some of the submitted information is not subject to the Act. You also claim that the submitted responsive information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you inform us that the submitted information includes a subpoena issued by a grand jury. The judiciary is expressly excluded from the requirements of the Act. *See Gov't Code* § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. *Open Records Decision No. 411 (1984)*. Further, records kept by a governmental body who is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. *Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983)*. *But see Open Records Decision No. 513 at 4 (1988)* (defining limits of judiciary exclusion). Thus, to the extent that the information at issue is in the custody of the department as agent of the grand jury, it is not subject to disclosure under the Act. To the extent that this information is not in the custody of the department as an agent of the grand jury, we will address your claim for exception of this and the remaining submitted information under the Act.

Section 552.108(a)(1) excepts from 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.” 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). For purposes of section 552.108, the arson investigation division of a fire department is considered a law enforcement unit. *See* Open Recrds Decision No. 127 (1976) (predecessor statute). You state that the submitted information relates to a criminal investigation that resulted in an arrest, but that the arrestee was “no-billed” by a Travis County grand jury; however, you also state that “the investigation remains open, and if further evidence is obtained . . . , the case will be re-filed.” Based on these representations, 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.*, 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*. Thus, with the exception of basic information, you may withhold the submitted information that is subject to the Act under section 552.108(a)(1).¹

To conclude, to the extent that information within the submitted documents is in the custody of the department as an agent of the grand jury, this information is not subject to the Act. With the exception of the basic front-page offense and arrest information, the department may withhold the submitted information that is subject to the Act under 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

¹We note that the requestor has a right of access to information in the submitted documents that otherwise would be excepted from release under the Act. *See* Gov’t Code § 552.023. Thus, the department must again seek a decision from this office if it receives a request for this information from a different requestor.

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).

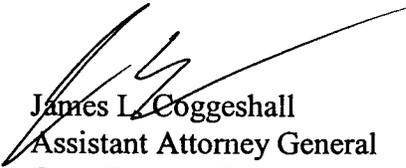
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/er

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Enc. Submitted documents

c: Mr. Darrell Bellinghausen
c/o: Ms. Cary Grace
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(w/o enclosures)