



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2007

Ms. Yushan Chang
Assistant City Attorney
City of Houston
PO Box 1562
Houston, Texas 77251-1562

OR2007-01793

Dear Ms. Chang:

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# 271146.

The Houston Police Department (the "department") received a request for information regarding a specific incident. You state that you will release to the requestor the accident report and the basic information from the police report. *See* Transp. Code § 550.065(c)(4) (providing for the release of accident reports to a person who provides two of three required pieces of information); Gov't Code § 552.108(c) (stating that basic information about arrested person, arrest, or crime may not be withheld under Gov't Code § 552.108); *see also 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); Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). You claim, however, that the some of the submitted information was obtained from a grand jury and is not subject to the Act. You claim that the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you claim that the information you have marked was obtained from a grand jury and is not subject to the Act. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. 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. 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.* You inform us that the information you have marked was obtained pursuant to a grand jury subpoena and therefore the information is held by you as an agent of the grand jury. Based on your representations and our review, we agree that the marked information was obtained pursuant to a grand jury subpoena, is in the custody of the department as agent of the grand jury, and it is not subject to disclosure under chapter 552.

Next, we note the remaining submitted information includes an executed search warrant, which is governed by section 552.022 of the Government Code. Section 552.022 provides in part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...
(17) information that is also contained in the public court record[.]

Gov't Code § 552.022(a)(17). Section 552.022(a)(17) makes an executed search warrant that has been filed with a court expressly public. Therefore, the department may withhold the executed search warrant only to the extent the information is made confidential under other law. Although the department raises section 552.108 for this information, this exception is discretionary and thus, does not make information confidential. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the executed search warrant may not be withheld under section 552.108 of the Government Code.

We note, however, that this executed search warrant contains information that is subject to section 552.130 of the Government Code, which constitutes other law for the purposes of section 552.022. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). Therefore, you must withhold the Texas-issued motor vehicle record information we have marked on this executed search warrant under section 552.130 of the Government Code.

Now we turn to your argument for 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.” Gov’t Code § 552.108(a)(1). 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 id.* §§ 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 remaining submitted information relates to a pending criminal prosecution. Based upon this representation, we conclude that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co.*, 531 S.W.2d 177 (court delineates law enforcement interests that are present in active cases). Accordingly, the department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.¹

In summary, with the exception of the information we have marked under section 552.130 of the Government Code, the department must release the executed search warrant pursuant to section 552.022(a)(17) of the Government Code. The department may withhold the remaining submitted information under section 552.108(a)(1) 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, 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

¹Because our ruling is dispositive, we need not address your remaining arguments.

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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/eb

Ref: ID# 271146

Enc. Submitted documents

c: Mr. Allen Graziadei
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(w/o enclosures)