



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 14, 2007

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston - Legal Department  
P. O. Box 368  
Houston, Texas 77001-0368

OR2007-01918

Dear Mr. Gambrell:

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# 272060.

The Houston Police Department (the "department") received a request for any and all documents relating to a specific incident. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the submitted information appears to have been obtained pursuant to a grand jury subpoena. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within the actual or constructive possession of a grand jury are not 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. *Id.* at 3. Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception

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<sup>1</sup>Although you did not timely raise section 552.136, this provision constitutes a compelling reason to withhold information, and, thus, we will address your argument under this exception. *See* Gov't Code §§ 552.301, .302.

to disclosure is applicable. *Id.* 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. *Id.* at 4. However, to the extent that this information is not in the custody of the department as agent of the grand jury, it is subject to disclosure under the Act. In that event, we address your arguments for this information, as well as 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* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information pertains to a pending criminal investigation and possible prosecution. Based upon this representation, we determine that release of the information at issue 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).

We note, however that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that basic information includes a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 186-187.

An arrestee’s social security number is confidential pursuant to section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Accordingly, the department must withhold the social security number of the arrestee in the submitted information pursuant to section 552.147 of the Government Code.<sup>2</sup>

In summary, to the extent that the submitted information is in the custody of the department as an agent of the grand jury, it is not subject to disclosure under the Act. To the extent this information is not so maintained, with the exception of basic information, it and the remaining submitted documents may be withheld pursuant to section 552.108(a)(1) of the

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<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

Government Code. The arrestee's social security number must be withheld under section 552.147 of the Government Code.<sup>3</sup>

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 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.

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,

A handwritten signature in cursive script that reads "Jordan Johnson".

Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/krl

Ref: ID# 272060

Enc. Submitted documents

c: Mr. Charles T. Kelly  
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(w/o enclosures)