



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 21, 2007

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251-1562

OR2007-02067

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# 271753.

The City of Houston (the "city") received a request for information pertaining to a named tow truck operator, a specified accident involving this individual, and permission to enter city property in inspect or photograph the vehicles involved in the specified accident. You state you have released some of the requested information. You claim that the submitted 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.

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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 we will address your arguments under this exception. See Gov't Code §§ 552.301, .302.

Initially, we address the portion of the request seeking to inspect vehicles. The Act applies to “public information,” which is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002. This office has ruled that tangible physical items are not “information” as that term is contemplated under the Act. *See, e.g.*, Open Records Decision No. 581 (1990). Thus, we agree that any responsive tangible physical evidence that is maintained by the city is not public information, and the city is not required to release such tangible evidence to the requestor in response to the present request. *See* Gov’t Code §§ 552.002, .021.

Next, we note that a portion of the submitted information was the subject of previous requests for information in response to which this office issued Open Records Letter No. 2007-01190 (2007). We have no indication that the pertinent facts and circumstances have changed since the issuance of Open Records Letter No. 2007-01190. Consequently, we determine that the city must continue to follow our ruling in Open Records Letter No. 2006-01190 with respect to the information at issue in that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, you inform us that the submitted information includes information obtained pursuant to a grand jury subpoena. 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 that 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 city as an 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 city as an agent of the grand jury, we will address your claim for exception of this and the remaining submitted information under the Act.

First, however, we note the submitted information includes an accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer’s Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident;

(2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). In this case, the requestor has provided all three pieces of information specified by the statute. Accordingly, the accident report in the submitted information, which we have marked, must be released to the requestor. We now address your claim under section 552.108 of the Government Code.

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 information relates to an open and active criminal investigation. Based upon this representation, we agree 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. 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*. *See* 531 S.W.2d at 185; *see also* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Therefore, other than basic information, the remaining information may be withheld under section 552.108(a)(1).<sup>2</sup>

Finally, we note that the submitted information includes an arrestee’s social security number. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.<sup>3</sup> The city must withhold the arrestee’s social security number under section 552.147.

In summary, the city must continue to follow our ruling in Open Records Letter No. 2006-01190 with respect to the information at issue in that ruling. To the extent the submitted information obtained pursuant to a grand jury subpoena is in the custody of the city as an agent of the grand jury, it is not subject to disclosure under the Act. The submitted

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<sup>2</sup>As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>3</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.

accident report must be released pursuant to section 550.065 of the Transportation Code. Except for basic information, the city may withhold the remaining submitted information from disclosure under section 552.108 of the Government Code. The city must withhold the arrestee's social security number under section 552.147. The remaining information must be released.

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).

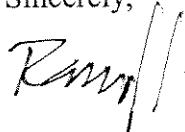
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

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 black ink, appearing to read "Ramsey A. Abarca". The signature is written in a cursive style with a vertical line extending upwards from the end.

Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/eb

Ref: ID# 271753

Enc. Submitted documents

c: Mr. Benjamin L. Hall  
530 Lovett Boulevard  
Houston, Texas 77006  
(w/o enclosures)