



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 8, 2009

Ms. Evelyn Njuguna  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-04691

Dear Ms. Njuguna:

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# 339437.

The Houston Police Department (the "department") received a request for information pertaining to incident report number 146691508 D. You state that the "Public Release Information" will be released to the requestor.<sup>1</sup> You assert that a portion of the submitted information is not subject to the Act. Alternatively, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you assert that the information in Exhibit C is not subject to the Act. 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. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to

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<sup>1</sup>We assume that the "public release information" you will release is the basic information referred to under section 552.108(c) of the Government Code. Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).

be records in the constructive possession of the grand jury and, therefore, are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. In this instance, although you state that the information at issue was obtained pursuant to grand jury summons, we note that Exhibit C appears to consist of investigation materials compiled by the department and the Harris County district attorney, and maintained by the department in connection with its investigation of the incident at issue. Therefore, to the extent that any of the information at issue is held by the department as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to the Act. The rest of this decision is not applicable to such information. However, to the extent that Exhibit C is not held by the department as an agent of the grand jury, so as to be subject to the Act, we consider it with the remaining submitted information.

We also note that the submitted information contains a CR-3 report that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). 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. *Id.* § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* Here, the requestor has not provided the department with two of the required pieces of information. Thus, the department must withhold the marked CR-3 accident report under section 552.101 in conjunction with Transportation Code section 550.065(b).

We note that the submitted information contains documents filed with the court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). You assert that these documents are excepted under section 552.108 of the Government Code; however, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, section 552.108 does not constitute other law for purposes of section 552.022(a)(17). Accordingly, the department may not withhold the court-filed documents, which we have marked, under section 552.108. We note, however, that section 552.130 of the Government Code, which does constitute other law for purposes of section 552.022(a)(17), is applicable to information in these

documents. Thus, we will address the applicability of section 552.130 to these documents, along with the remaining information.

You assert that the remaining submitted information is excepted under section 552.108. 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.” See 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), 301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the remaining 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, the submitted information contains “Statutory Warning” and “Notice of Suspension” documents. The police department provided copies of these forms to the individual at issue. You have not explained how releasing this information, which has already been seen by the defendant, would interfere with the detection, investigation, or prosecution of crime. See Gov’t Code § 552.108(a)(1). Accordingly, the “Statutory Warning” and “Notice of Suspension” documents may not be withheld under section 552.108. However, we find that section 552.108(a)(1) is applicable to the remaining information we have marked. Thus, with the exception of the “Statutory Warning” and “Notice of Suspension” documents and the basic front page offense and arrest information you state you have released, you may withhold the remaining requested information from disclosure under section 552.108(a)(1).

We note that some of the remaining information in the court filed documents and in the “Statutory Warning” and “Notice of Suspension” documents is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information we have marked under section 552.130.

In summary, to the extent that it is held by the department as an agent of the grand jury, Exhibit C consists of records of the judiciary and is thus not subject to disclosure under the Act. The requested crash report must be withheld under section 552.101 in conjunction with Transportation Code section 550.065. With the exception of the court filed documents subject to section 552.022(a)(17), the “Statutory Warning” and “Notice of Suspension” documents, and the front page information you state you have released, the department may withhold the information we have marked under section 552.108. The department must

withhold the information we have marked under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/eeg

Ref: ID# 339437

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)