



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2009

Ms. Linda M. Champion
Assistant City Attorney
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2009-13847

Dear Ms. Champion:

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# 356993.

The City of Victoria (the "city") received a request for several categories of information pertaining to case number 2009-00005956. You state you will release some information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you argue that the submitted information was the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2009-03711 (2009) and 2009-03919 (2009). In Open Records Letter Nos. 2009-03711 and 2009-03919 we concluded that the city may withhold several categories of information pertaining to case number 2009-00005956 pursuant to section 552.108(a)(1). As we have no indication that the law, facts, and circumstances surrounding these prior rulings have changed, you may continue to rely on Open Records Letter Nos. 2009-03711 and 2009-3919 as previous determinations and withhold or release the responsive information in this request that was previously ruled on in accordance with these prior rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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). We note, however, that portions of the submitted information were created after the dates that the previous requests for information were received. Thus, this information was not submitted to this office for a determination and was therefore not the subject of either previous ruling. Accordingly, we will address the city's arguments against disclosure of the remaining information that is not subject to Open Records Letter Nos. 2009-03711 and 2009-03919.

Next, we note that portions of the submitted information consist of telephone records obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. 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 is 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 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), 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. Thus, to the extent the submitted telephone records are in the custody of the city as an agent of the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. This decision does not address the public availability of such information. However, to the extent this information is not in the custody of the city as an agent of the grand jury, we will address your exceptions to disclosure for this information, along with the remaining submitted information.

We note the submitted documents contain a search warrant that has been filed with a court. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. *See* Gov't Code § 552.022(a)(17). Such information must be released unless it is expressly confidential under other law. You claim the submitted court-filed document is excepted from disclosure under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(17). *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the city may not withhold the court-filed document, which we have marked, under section 552.108 of the Government Code. We note, however, that the search warrant contains some information that is subject to section 552.130 of the Government Code, which constitutes "other law" for the purposes of section 552.022.

Section 552.130 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). Therefore, the city must withhold the Texas motor vehicle record information we have marked in the search warrant under section 552.130 of the Government Code. The remaining information that is subject to section 552.022 must be released.

We now address your argument under section 552.108 of the Government Code for the remaining information. 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." *Id.* § 552.108(a)(1). 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 the submitted information relates to an ongoing criminal investigation. Based on this representation, we conclude that the 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.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). Accordingly, we find that section 552.108(a)(1) of the Government Code is applicable to the information at issue.

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*. The city must release basic information even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you indicate you will release, you may withhold the submitted information from disclosure under section 552.108(a)(1).

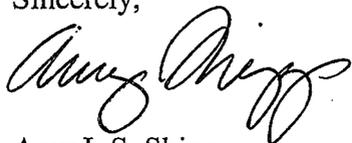
In summary, the city may continue to rely on Open Records Letter Nos. 2009-03711 and 2009-03919 as previous determinations and withhold or release the responsive information in this request that was previously ruled on in accordance with these prior rulings. To the extent the submitted telephone records are in the custody of the city as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. The city must release the search warrant we have marked pursuant to section 552.022 of the Government Code; however, the city must withhold the Texas motor vehicle record information we have marked in the search warrant under section 552.130 of the Government Code. With the exception of basic information, the city may withhold the remaining information under section 552.108 of the Government Code.

As our ruling is dispositive, we do not address your remaining arguments against disclosure.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 356993

Enc. Submitted documents

cc: Requestor
(w/o enclosures)