



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2010

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, First Floor
Conroe, Texas 77301

OR2010-03691

Dear Mr. Walker:

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# 374049.

The Montgomery County Sheriff's Office (the "sheriff") received a request for a specified incident report. You claim the submitted report and its accompanying information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code and Article 20.02 of the Code of Criminal Procedure. We have considered your arguments and reviewed the submitted information.

Initially, you inform us the information in Exhibit C consists of a grand jury subpoenas and records obtained under those subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that for the purposes of the Act, a grand jury 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 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. *See* Open Records Decision Nos. 513 (1988), 411 (1984), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, we find that the information in Exhibit C consists of records of the judiciary, and therefore is not subject to disclosure under the Act.

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: ... 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You provide an affidavit of Assistant District Attorney Bill Delmore for the Montgomery County District Attorney’s Office stating the remaining information relates to a criminal cause of action that is currently under appeal. Based on this representation and our review, we conclude 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). Thus, section 552.108(a)(1) is applicable to the remaining information.

However, we note, and you acknowledge, that 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). Such basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense. The sheriff must release basic information even if it does not literally appear on the front page of an offense or arrest report. *See Open Records Decision No. 127 (1976)* (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹ As our ruling is dispositive, we need 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

¹ We note the requestor has a special right of access to some of the basic information being released in this instance. Because such information is confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eb

Ref: ID# 374049

Enc. Submitted documents

c: Requestor
(w/o enclosures)