



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2010

Ms. Helen Valkavich
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2010-03758

Dear Ms. Valkavich:

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# 372847 (COSA File No. 09-1638).

The City of San Antonio (the "city") received a request for a specified video recording and supporting documents pertaining to a specified case number. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the city obtained the submitted surveillance footage 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 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

disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Upon review, we find that the submitted surveillance footage, which we have marked, is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of such information. The remaining submitted information, however, is subject to the Act and must be released unless it falls within an exception to public disclosure.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. You seek to withhold portions of the remaining information pursuant to chapter 550 of the Transportation Code.¹ *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by section 550.065(c), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides at least 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). In this instance, the requestor has not provided at least two of the three items of information specified by section 550.065(c)(4). We note some of the information you have marked does not consist of accident reports completed pursuant to chapter 550 of the Transportation Code. Therefore, the city must only withhold the submitted CR-3 crash report we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.²

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the remaining information at issue relates to a criminal investigation that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is generally applicable to the remaining information at issue.

However, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic

¹You raise section 552.101 in conjunction with section 560.065 of the Transportation Code, which does not exist. Based on your arguments, we understand you to raise section 552.101 in conjunction with section 550.065 of the Transportation Code.

²As our ruling is dispositive of this information, we need not address your remaining argument against its disclosure.

information refers to the information held to be public in *Houston Chronicle Publishing 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); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, (1) the city must withhold the submitted CR-3 crash report we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; and (2) with the exception of basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 372847

Enc. Submitted documents

c: Requestor
(w/o enclosures)