



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2010

Ms. Janet I. Monteros
Assistant County Attorney
El Paso County Attorney's Office
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2010-19231

Dear Ms. Monteros:

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# 404398.

The El Paso County Sheriff's Office (the "sheriff") received a request for all information relating to a specified case. You state you will release some information to the requestor. You claim the submitted information is not subject to the Act or is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you inform us some of the submitted information relates to grand jury proceedings. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined 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 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* 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.

You assert the information you have marked is held by the sheriff on behalf of the grand jury. However, the information at issue reflects it was created by the sheriff for its own use in the investigation at issue and later presented to the grand jury. Thus, to the extent the information you have marked is in the custody of the sheriff as an agent for 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 the information you have marked is held in the sheriff's own capacity in the course of official sheriff's business, we will address your claimed exceptions to the disclosure of this information.

Section 552.108(a)(1) of the Government Code 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). 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, and provide an affidavit from a special prosecutor with the El Paso County District Attorney's Office stating, the submitted information relates to an open criminal prosecution and its release would interfere with that prosecution. Based on these representations and our review, we conclude 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) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

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). This subsection refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The sheriff must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

¹As our ruling under section 552.108 is dispositive for the information at issue, we need not address your remaining arguments against disclosure, except to note basic information may generally not be withheld from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

In summary, to the extent the information you have marked is in the custody of the sheriff as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. Except for basic information, the sheriff may withhold the submitted information under section 552.108(a)(1) 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/tf

Ref: ID# 404398

Enc. Submitted documents

c: Requestor
(w/o enclosures)