



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2011

Mr. Robert N. Bland, IV
District Attorney
Ector County
Room 305, 300 North Grant
Odessa, Texas 79761

OR2011-02813

Dear Mr. Bland:

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# 410006.

The Ector County Sheriff's Office (the "sheriff") received a request for the investigative file related to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, some of the submitted phone records appear to have been obtained pursuant to grand jury subpoenas. This office has concluded that grand juries are not governmental bodies that are subject to the Act, so that records that are within the actual or constructive possession of a grand jury are not subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *Id.* at 3. Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *Id.* Thus, to the extent the submitted phone records are in the custody of the sheriff as an agent of the grand jury, they are not subject to disclosure under the Act. *Id.* at 4. However, to the extent the submitted phone records are not in the custody of the sheriff as an agent of the grand jury, they are subject to disclosure under the Act. In that event, we address your arguments for this information, as well as for the remaining submitted information.

Next, we note the submitted information contains CR-3 accident reports that were completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See id.* § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation 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 of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the sheriff with all three of the items listed in section 550.065(c)(4). Accordingly, the requestor in this instance has a statutory right of access to the submitted accident reports pursuant to section 550.065(c)(4). You claim these accident reports are excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. However, a statutory right of access generally prevails over the Act's exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Act inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, the sheriff must release the submitted CR-3 accident reports in their entirety to the requestor under section 550.065(c) of the Transportation Code.

We now address your arguments against disclosure of the remaining 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[.]" Gov't Code § 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 that the remaining information relates criminal prosecution that is currently pending with the Ector County District Attorney's Office. Based on this representation, we conclude that the release of this 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. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976).

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). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic

information, the sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, to the extent the submitted phone records are in the custody of the sheriff as an agent of the grand jury, they are not subject to disclosure under the Act. The sheriff must release the marked CR-3 accident report forms. With the exception of basic information, the sheriff may withhold the remaining 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/vb

Ref: ID# 410006

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure, except to note section 552.103 does not generally except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).