



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2011

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton St., 3rd Floor
Fort Worth, Texas 76102

OR2011-06049

Dear Ms. Sangsvang:

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# 416392 (Fort Worth Request No. W006833).

The City of Fort Worth (the "city") received a request for seven categories of information pertaining to a specified incident involving the requestor's client. You claim a portion of the submitted information is not subject to the Act. You also claim the submitted 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, we must address your claim the information you have marked is not subject to the Act. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B); *see also id.* § 552.0035 (access to judicial records is governed by Supreme Court of Texas or other applicable laws or rules). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and, therefore, is 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). We note, however, 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. Furthermore, 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. In this instance, you have marked a request for a grand jury subpoena submitted to the grand jury by an investigator with the city's police department. You claim the marked information is maintained by the city on behalf of the grand jury and is therefore not subject to the Act. Upon review, however, we find the marked information was created and is maintained in the city's own capacity as part of the city's investigation into the events of the specified incident. Thus, the city has failed to explain how the marked information is held by the city on behalf of the grand jury. Accordingly, we find the marked information is subject to the Act and may only be withheld if an exception under the Act applies. *See* Gov't Code § 552.002 (providing that information collected, assembled, or maintained in connection with the transaction of official business by a governmental body is "public information").

Next, we note the submitted information includes a magistrate warning that has been signed by a magistrate. Information filed with a court is generally a matter of public record and may not be withheld from disclosure unless confidential under "other law." *See* Gov't Code § 552.022(a)(17); *see also* *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Although you raise section 552.108 of the Government Code for this information, section 552.108 is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" that makes court records confidential for the purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, the magistrate warning we marked may not be withheld under section 552.108 of the Government Code. As you raise no further exceptions to disclosure of this document, it must be released.

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). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983). You provide an affidavit from the Tarrant County District Attorney's Office stating the crime at issue in report number 10-127712 is currently pending prosecution with that office, and that release of report number 10-127712 at this time would unduly interfere with that criminal case. Based on this representation, we determine release of the remaining information in report number 10-127712 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 that are 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 generally applicable to the remaining information at issue.

We note, however, section 552.108 does not except from disclosure basic information about an arrest, an arrested person, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See 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 in report number 10-127712 under section 552.108(a)(1) of the Government Code.¹

In summary, the magistrate warning we marked must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the city may withhold the remaining information in report number 10-127712 under section 552.108(a)(1) of the Government Code.²

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tf

¹We note basic information includes an arrested person's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

²As our ruling is dispositive, we need not address your remaining raised exceptions to disclosure.

Ref: ID# 416392

Enc. Submitted documents

c: Requestor
(w/o enclosures)