



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2011

Ms. Jessica Sangsvang
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2011-10294

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# 426447.

The Fort Worth Police Department (the "department") received a request for information pertaining to the death of a named individual. You claim the requested 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.

You state some of the submitted information consists of records of a grand jury that the City of Fort Worth (the "city") is holding on its behalf. The judiciary is expressly excluded from the requirements of the Act. 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, therefore, not subject to the Act. 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. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983). *But see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). Thus, based on your representation that the information at issue is held by the city as agent of the grand jury, we conclude this information, which you have marked, consists of records of the judiciary not subject to disclosure under the Act.

We next note pages 43 and 44 of the submitted electronic file you have labeled "W0916 Broden" consist of documents filed with the court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under other law. *See* Gov't Code § 552.022(a)(17). Although you assert this information is excepted from disclosure under section 552.108 of

the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, section 552.108 does not constitute other law for purposes of section 552.022(a)(17). Accordingly, the department may not withhold the court-filed documents under section 552.108. However, section 552.101 of the Government Code does constitute other law for purposes of section 552.022; therefore, we will consider whether this section requires you to withhold any of the information subject to section 552.022, as well as the remaining submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The common-law right to privacy, however, is a personal right that lapses at death and, therefore, does not encompass information that relates to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981); Attorney General Opinions JM-229 at 3 (1984), H-917 at 2 (1976); Open Records Decision No. 272 at 1 (1981). You assert the submitted information, including the information subject to section 552.022, must be withheld in its entirety to protect the privacy of the named individual; however, the named individual is a murder victim. Therefore, the submitted information is not confidential under common-law privacy based on the privacy interests of the deceased victim, and the department may not withhold it under section 552.101 on that ground. Accordingly, the department must release pages 43 and 44 of the submitted electronic file you have labeled "W0916 Broden."

You assert the information not subject to section 552.022 is excepted from disclosure pursuant to section 552.108 of the Government Code. 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: (1) 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), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

The information at issue relates to the investigation of an individual who was suspected of murdering two victims. You have submitted an affidavit from the Chief of Criminal District Court No. 3 of the Tarrant County Criminal District Attorney's Office (the "district attorney"), who states the individual was convicted of capital murder of the first victim and as a result of the capital murder conviction, charges of murdering the second victim were dropped. However, the district attorney also explains the individual is still subject to

prosecution for the murder of the second victim. The request is for information about the investigation of the death of the second victim. We also note there is no statute of limitations for the crime of murder. Crim. Proc. Code art. 12.01(1)(A). Accordingly, based on the district attorney's representations, 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) (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).

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). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front-page offense and arrest information, the department may withhold the remaining information under section 552.108(a)(1).¹

We conclude the following: (1) the department is not required to release the submitted records that the city is holding on behalf of a grand jury; (2) the department must release pages 43 and 44 of the submitted electronic file you have labeled "W0916 Broden" and the basic information in the remaining documents; and (3) the department 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

¹As we are able to resolve this matter under section 552.108, we do not address your other arguments to withhold this information.

Ref: ID# 426447

Enc. Submitted documents

c: Requestor
(w/o enclosures)