



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2013

Ms. Cheryl Elliott Thornton  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2013-18464

Dear Ms. Thornton:

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# 503194 (CAO File Nos. 13PIA0409 and 13PIA0410).

The Harris County Constable, Precinct 4 (the "constable's office") received two requests from different requestors for information regarding a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information consists of a grand jury subpoena and information obtained pursuant to the grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See id.* § 552.003(1)(B). This office has determined that for purposes of the Act, a grand jury is part of the judiciary and is therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Moreover, 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 are therefore 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 such information is in the grand jury's constructive possession when the same information also is 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. Therefore, to the extent the constable's office

has possession of any of the information at issue as an agent of the grand jury, any such information is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of any such information, which need not be released to the requestors. To the extent the constable's office does not have possession of the information at issue as an agent of the grand jury, any such information is subject to the Act and must be released unless the information falls within the scope of an exception to disclosure.

Next, we note a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains court-filed documents, which we have marked, that are subject to subsection 552.022(a)(17). The marked court-filed documents must be released unless they are made confidential under the Act or other law. *See id.* § 552.022(a)(17). You seek to withhold this information under section 552.108 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver).* Therefore, the marked court-filed documents may not be withheld under section 552.108 of the Government Code. As you raise no further exception to disclosure of the marked court-filed documents, they 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). You state the submitted information relates to a pending criminal investigation. Based on your representation and our review, we conclude 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. 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 applicable to the remaining 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; 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 constable's office may withhold the remaining information under section 552.108(a)(1).

In summary, to the extent the constable's office has possession of any of the information at issue as an agent of the grand jury, any such information is in the grand jury's constructive possession, is not subject to the Act, and need not be released to the requestors. The constable's office must release the court-filed documents subject to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the constable's office 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 503194

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)