



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2005

Mr. John M. Hill
Cowles & Thompson, P.C.
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR2005-03150

Dear Mr. Hill:

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# 221941.

The Addison Police Department (the "department"), which you represent, received a request for the following: (1) all information associated with a specified incident and investigation involving the requestor's client, including the entire investigation file and all evidence, including a video surveillance videotape and witness statements, among other evidentiary items; (2) a copy of the 911 tape associated with the incident; (3) the police report(s) of the alleged incident; (4) a crime grid of the one mile area surrounding the specified business location at which the incident was alleged to have occurred; (5) a listing of all crimes that occurred at the same business location; and (6) copies of all police reports for all incidents involving violence at the business location for the past two years. You claim that the requested 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

Initially, we note that the submitted information includes documents that appear to have been produced in response to a grand jury subpoena. This office has concluded that grand juries are not governmental bodies subject to chapter 552 of the Government Code, so records within the actual or constructive possession of a grand jury are not subject to disclosure

under chapter 552. 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 chapter 552. *Id.* at 3. Information that is not so held or maintained is subject to chapter 552 and may be withheld only if a specific exception to disclosure is applicable. *Id.* Thus, to the extent that any of the submitted documents held by the department are in the constructive possession of the grand jury, they are not subject to the Act.

Next, we note that you did not submit a copy of the requested 911 tape, the crime grid, a list of all crimes that occurred at the same business location, or copies of all police reports for all incidents involving violence at the business location for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to these items of the request existed on the date the department received the instant request, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov't Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) is applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. You state that the submitted information relates to closed investigations that concluded in results other than convictions or deferred adjudication. Based on your representations and our review of the submitted information, we find that section 552.108(a)(2) is applicable in this instance.

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 Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Basic information under section 552.108(c) includes the identity of the complainant. See Open Records Decision No. 127 at 3-4 (1976) (summarizing information deemed public by *Houston Chronicle*). In this instance, the complainant in the information you have labeled Exhibit 4 was allegedly the victim of a sexual assault. The identity of a sexual assault victim must be withheld from the public

under section 552.101 in conjunction with common-law privacy. See Gov't Code § 552.101; *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683 (Tex. 1976); *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.—El Paso 1992, writ denied); Open Records Decision Nos. 393 (1983), 339 (1982). Thus, in this instance, the department must not release the Exhibit 4 complainant's identity under section 552.108(c).¹ Otherwise, the department must release basic information, including detailed descriptions of the alleged offenses, even if the information does not literally appear on the front page of an offense or arrest report. The department may withhold the rest of the submitted information under section 552.108(a)(2). As we are able to make this determination, we need not address your other arguments against disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

¹ The complainant in the information you have labeled Exhibit 3 was also allegedly the victim of a sexual assault. Here, however, the requestor has a special right of access pursuant to section 552.023 of the Government Code to information that is otherwise private because the requestor is the complainant's attorney. See Gov't Code § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interests); see *id.* § 552.229 (consent to release information under special right of access). We note that because the requestor has a special right of access to certain portions of the submitted information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

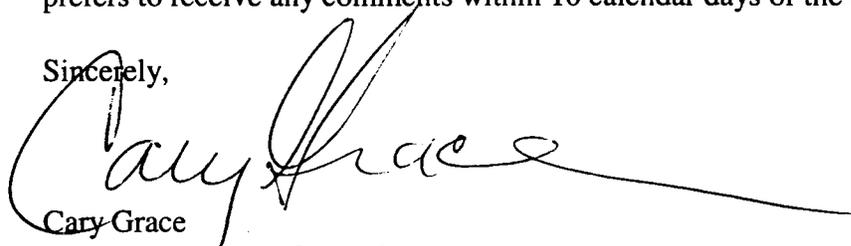
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 221941

Enc. Submitted documents

c: Mr. Jason S. Turchin
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(w/o enclosures)