



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2005

Ms. Christina O'Neil
Assistant District Attorney
Dallas County
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207-4399

OR2005-10818

Dear Ms. O'Neil:

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# 237334.

The Dallas Police Department (the "department") received a request for four categories of information related to the criminal investigation of a named individual. You state that you have released some of the information to the requestor. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.130, 552.136, 552.137, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information appears to have been obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See* 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. *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), 411 (1984), 398 (1983); *but see* Open Records Decision No. 513 at 4 (1988) (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 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. 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* Open Records Decision No. 513 (1988). Therefore, to the extent that the submitted information is held by the department as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. The rest of this decision is not applicable to such information. To the extent that the submitted information at issue is not held by the department as an agent of the grand jury, so as to be subject to the Act, we consider your exceptions to disclosure.

Next, we note that the submitted information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The information at issue is a completed investigation. Therefore, as prescribed by section 552.022, the department must release the submitted information unless it is confidential under section 552.108 or other law. *See* Gov't Code § 552.022(a)(1). Section 552.111 of the Government Code is a discretionary exception to public disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). As such, section 552.111 does not qualify as other law that makes information confidential for the purposes of section 552.022. Thus, the department may not withhold the requested information under section 552.111 of the Government Code. However, the attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure. The Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328, 337 (Tex. 2001). The Texas Rules of Civil Procedure, however, only apply to "actions of a civil nature." TEX. R. CIV. P. 2. Accordingly, rule 192.5 does not apply to the criminal matters at issue here and no portion of the remaining information may be withheld on this basis. Accordingly, we will address your arguments under sections 552.101, 552.108, 552.130, 552.136, 552.137, and 552.1325 with respect to the remainder of the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The department asserts that the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that the department may withhold the submitted information pursuant to section 552.108(a)(2).

We note, however, that basic information about an arrested person, an arrest, or a crime is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.–Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Basic information includes a detailed description of the offense as well as the identity and description of the complainant, such as the name, sex, and physical description of the complainant. *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 at 3-4 (1976). We note, however, that basic information does not include a complainant's address or telephone number. *Id.*

You claim that the complainant's identity should be withheld under section 552.1325 of the Government Code. Section 552.1325 provides as follows:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Gov't Code § 552.1325. You state that the complainant's identity relates to a crime victim. However, in this instance, you have not demonstrated that the basic information pertains to a crime victim as defined by article 56.32 of the Code of Criminal Procedure. Likewise, you

have not shown that any of the information in question was submitted for purposes of preparing a victim impact statement. *See* Gov't Code § 552.1325(b). We therefore conclude that the department may not withhold any of the remaining submitted information under section 552.1325. *See* Attorney General Opinion No. GA-0220 at 4 (by its terms, only specific crime victim information contained in victim impact statement is confidential under section 552.1325). Thus, you must release the types of information that are considered to be basic information. However, the remaining information may be withheld under section 552.108(a)(2). Although section 552.108 authorizes the department to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.¹

Finally, you request that this office issue a previous determination that would permit the department in the future to withhold from disclosure any excess complainant information from offense reports and deny a request for the same information in the future without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time. 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 free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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); *Texas 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 Office of the Attorney General 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. 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,



James Forrest
Assistant Attorney General
Open Records Division

JF/segh

Ref: ID# 237334

Enc. Submitted documents

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