



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2006

Ms. Julie Joe
Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767

OR2006-00163

Dear Ms. Joe:

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# 239547.

The Travis County District Attorney's Office (the "district attorney") received a request for information relating to stalking cases involving the requestor. You assert that some of the responsive information is not subject to the Act. You claim that the rest of the requested information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code. We have considered your arguments and have reviewed the information you submitted.¹

Initially, we address your assertion that some of the submitted information is not subject to disclosure under the Act. 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

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district attorney to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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).

You state that some of the submitted information was obtained pursuant to a grand jury subpoena and is maintained by the district attorney as an agent of the grand jury. Based on your representations and our review of the information in question, we agree that it is not subject to the Act. The rest of this decision is not applicable to that information, and it need not be released to the requestor.

We note that the rest of the submitted information includes arrest warrants and the affidavits for the warrants. Article 15.26 of the Code of Criminal Procedure provides that "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information[.]" Crim. Proc. Code art. 15.26. As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). In this instance, the submitted affidavits were presented to a magistrate, who issued the corresponding arrest warrants. Therefore, the district attorney must release the affidavits and arrest warrants, which we have marked, under article 15.26 of the Code of Criminal Procedure.

You seek to withhold the rest of the submitted information under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from public 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 at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 rest of the submitted information relates to investigations that did not result in a conviction or deferred adjudication. Based on your representation and our review of the information in question, we find that section 552.108(a)(2) is applicable in this instance.

We note that 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). See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district attorney must release basic information under section 552.108(c), including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report.² The district attorney may withhold the remaining information under section 552.108(a)(2) of the Government Code.³

In summary: (1) the information maintained by the district attorney as agent of the grand jury is not subject to disclosure under the Act; (2) the district attorney must release the arrest warrants and the affidavits for the warrants under article 15.26 of the Code of Criminal Procedure; and (3) except for the basic information that must be released under section 552.108(c), the district attorney may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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

²We note that the district attorney would ordinarily be required to withhold some of the information that is subject to section 552.108(c) on privacy grounds under section 552.101 of the Government Code. In this instance, however, the information in question relates to the requestor, who has a special right of access to her own private information. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Should the district attorney receive a request for this same information from another person who would not have a right of access to the requestor's private information, the district attorney should resubmit this same information and request another decision. See Gov't Code §§ 552.301(a), .302.

³As we are able to make this determination, we do not address section 552.107.

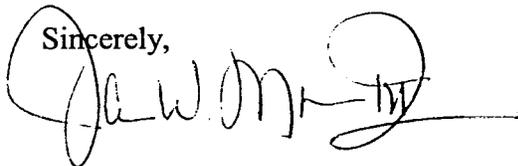
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental 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).

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,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a large, stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 239547

Enc: Submitted documents

c: Ms. Margarita Ash
14245 Mellow Meadows Drive, E-104
Austin, Texas 78750
(w/o enclosures)