



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2007

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston - Legal Department  
P. O. Box 368  
Houston, Texas 77001-0368

OR2007-02698

Dear Ms. Chang:

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# 273817.

The Houston Fire Department (the "department") received a request for information pertaining to an individual's death in a house fire that occurred in 1999. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform us that the information in Exhibit 2 was 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 in the constructive possession of the grand jury and therefore not subject to the Act. *See Open Records Decisions Nos. 513 (1988), 411, 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 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

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information is not excluded from the reach of the Act by the judiciary exclusion. See ORD 513. Therefore, to the extent that the information in Exhibit 2 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 the Act. The rest of this decision is not applicable to such information. To the extent that the information in Exhibit 2 is not held by the department as an agent of the grand jury, so as to be subject to the Act, we consider it with the remaining submitted information.

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), (b)(1), 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information relates to an open and active criminal investigation by the Arson Bureau. Based on your representations and our review, we conclude that release of the submitted information would interfere with the detection, investigation, or prosecution of crime.<sup>2</sup> See *Houston Chronicle Publ'g 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*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the department may withhold the remaining information pursuant to section 552.108(a)(1) of the Government Code.

In summary, to the extent that the information in Exhibit 2 is held by the department as an agent of the grand jury, it is in the grand jury's constructive possession and is not subject to the Act. With the exception of basic information, 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 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

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<sup>2</sup>As our ruling is dispositive, we do not address your remaining arguments.

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).

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,



Kara A. Batey  
Assistant Attorney General  
Open Records Division

KAB/krl

Ref: ID# 273817

Enc. Submitted documents

c: Ms. Kimberly D. (Bamford) Dixon  
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(w/o enclosures)