



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2007

Ms. Christine Womble
Assistant District Attorney
Frank Fowley Courts Building
133 North Industrial Boulevard, LB-19
Dallas, Texas 75207

OR2007-07228

Dear Ms. Womble:

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# 280604.

The Dallas County District Attorney (the "district attorney") received a request for offense reports, accident reports, 9-1-1 call sheets, arrest reports, prosecution reports, grand jury testimony, scientific/laboratory reports, and witness statements pertaining to a specified case. You state that you do not maintain any offense reports, accident reports, 9-1-1 call sheets, grand jury testimony, or scientific/laboratory reports responsive to the request.¹ You also state that you have released basic information from the specified case to the requestor. *See* Gov't Code § 552.108(c) (basic information about an arrested person, and arrest, or a crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim that the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.111, 552.130 and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your representation that some of the submitted records are confidential as a part of grand jury proceedings. The Act does not apply to information within the actual or constructive possession of the grand jury. Open Records Decision No. 513 (1988). Information obtained pursuant to a grand jury subpoena issued in connection with an investigation is within the grand jury's constructive possession and is not subject to the Act.

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Id.; *see also* Gov't Code § 552.003. After careful review, we find that you have failed to show that any of the submitted documents were obtained at the direction of the grand jury or pursuant to a grand jury subpoena. Thus, we will address your arguments against disclosure of the submitted information.

Section 552.108(a)(1) 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.” 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* Gov't Code §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the submitted information pertains to a case that resulted in a conviction. However, you state, and provide documentation supporting, that a motion for a new trial is pending in this case. You also inform us that the requested information comes from the district attorney's prosecution file. Based on your representations, we conclude that the release of the submitted 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), writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, except for basic information, which you state you have released, you may withhold the submitted information under section 552.108(a)(1). Because our determination on this issue is dispositive, we need not address your remaining 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).

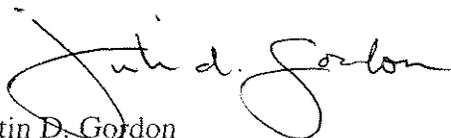
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/eeg

Ms. Christine Womble - Page 4

Ref: ID# 280604

Enc. Submitted documents

c: Mr. Dan L. Wyde
Wyde, Clements & Westmoreland
One Turtle Creek Building
3878 Oak Lawn Avenue, Suite 560
Dallas, Texas 75219
(w/o enclosures)