



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2008

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2008-07692

Dear Mr. Weir:

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# 311901.

The San Antonio Police Department (the "department") received a request for information relating to a specified case number. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that some of the submitted information was obtained pursuant to grand jury summonses. 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). Moreover, 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), 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 information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent that the department has possession of the submitted information as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public

availability of any such information. To the extent that the department does not have possession of the submitted information as an agent of the grand jury, the information is subject to the Act and must be released unless it falls within an exception to public disclosure.

Section 552.108 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[.]” *Id.* § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108(a)(1) is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information is related to a pending criminal investigation. Based on your representation, we conclude that section 552.108(a)(1) is generally applicable to the submitted information that is subject to the Act. *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 some of the submitted information is contained in court records and thus is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for required public disclosure of “information that is also contained in a public court record,” unless the information is expressly confidential under other law. Gov’t Code § 552.022(a)(17). We have marked information contained in court records that is subject to section 552.022(a)(17). Section 552.108 is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the department may not withhold any of the information in the marked court records under section 552.108.

We also 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information under section 552.108(c) includes an identification and description of the complainant. *See id.* at 3-4. In this instance, the complainant was the victim of an alleged sexual offense. Therefore, the department must withhold the identity of the complainant under

section 552.101 of the Government Code in conjunction with common-law privacy.¹ *See* Gov't Code § 552.101; *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). We have marked the types of identifying information that must be withheld on that basis.²

Basic information also includes the arrested person's home address. *See* ORD 127 at 3-4. In this instance, the arrested persons are peace officers, one of whose home addresses also appears in one of the court documents. The department may be required to withhold the arrestees' home addresses under section 552.1175 of the Government Code, which is a confidentiality provision for the purposes of section 552.022.³ Section 552.1175 is applicable to information relating to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.1175(a)(1). Section 552.1175(b) provides as follows:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). The department must withhold the home addresses that we have marked under section 552.1175 to the extent that the peace officers concerned elect to restrict access to their home addresses in accordance with section 552.1175(b).

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See id.* §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

²We note that common-law privacy is not applicable to information contained in public court documents. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992).

³Unlike other exceptions to disclosure under the Act, this office will raise section 552.1175 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Lastly, we note that one of the court documents contains Texas driver's license information. Section 552.130 of the Government Code, which also is a confidentiality provision for the purposes of section 552.022, excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state.⁴ *See id.* § 552.130(a)(1). We have marked the information that the department must withhold under section 552.130.

In summary: (1) information held by the department as the grand jury's agent is in the grand jury's constructive possession and is not subject to the Act; (2) the department may withhold the remaining information under section 552.108(a)(1) of the Government Code, except for the marked court records that are subject to disclosure under section 552.022(a)(17) and the basic information that must be released under section 552.108(c); (3) the department must withhold the marked types of information that identify the complainant under section 552.101 of the Government Code in conjunction with common-law privacy; (4) the department must withhold the home addresses that we have marked under section 552.1175 of the Government Code to the extent that the peace officers concerned elect to restrict access to their home addresses in accordance with section 552.1175(b); and (5) the department must withhold the marked Texas driver's license information under section 552.130 of the Government Code.⁵

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

⁴Section 552.130 also is a mandatory exception that may not be waived. Gov't Code §§ 552.007, .352; ORD 674 at 3 n.4.

⁵We note that the submitted information contains the social security numbers of arrested persons. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

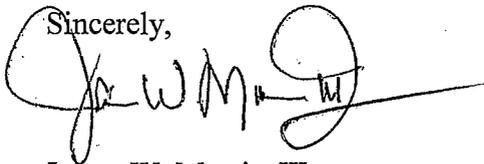
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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 M III', with a long horizontal line extending to the right.

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

JWM/ma

Ref: ID# 311901

Enc: Submitted information

c: Mr. Charles Parker
6338 North New Braunfels #144
San Antonio, Texas 78209
(w/o enclosures)