



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 2, 2009

Ms. Evelyn Njuguna  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-07482

Dear Ms. Njuguna:

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# 345047.

The Houston Police Department (the "department") received a request for "the complete [department] Investigation File, including all photographs, for the incident that occurred on December 11, 2008 at" a specified location. You state the department will provide the requestor with some of the responsive information. You assert the submitted information is not subject to the Act. We have considered your arguments and reviewed the submitted information.

Initially, we note that you have submitted a copy of a related previous request for information. However, the copy of the previous request is not responsive to the present request. This decision does not address the public availability of this non-responsive information, and this information need not be released in response to this request.

You assert the submitted information was obtained pursuant to grand jury subpoenas and constitutes grand jury records not subject to the Act. Article 20.02(a) of the Code of Criminal Procedure provides that "[t]he proceedings of the grand jury shall be secret." This office has concluded that grand juries are not subject to the Act and that records that are within the constructive possession of grand juries are not public information subject to disclosure under the Act. *See* Open Records Decision No. 513 (1988). When an individual

or entity acts at the direction of the grand jury as its agent, information prepared or collected by the agent is within the grand jury's constructive possession and is not subject to the Act. *See id.* Information that is not so held or maintained is subject to the Act and may be withheld only if a specific exception to disclosure is applicable. *See id.*

You assert the submitted information is in the constructive possession of the grand jury because the department collected the information at the direction of the grand jury. The submitted information includes copies of grand jury subpoenas. Upon review, we find the medical, telephone, and insurance records obtained pursuant to grand jury subpoenas are in the custody of the department as an agent of the grand jury and this information, which we have marked, is not subject to the Act. However, we have no indication that the department obtained the remaining information pursuant to a grand jury subpoena. Nevertheless, to the extent the remaining information was obtained pursuant to a grand jury subpoena issued in connection with an investigation, the information is within the grand jury's constructive possession and is not subject to disclosure under the Act. To the extent the remaining information is not held by the department as an agent of the grand jury, it is subject to the Act.

We note the remaining information contains driver's license numbers that are excepted from disclosure under section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Accordingly, the department must withhold the Texas driver's license numbers we have marked pursuant to section 552.130 of the Government Code.

In summary, the information we have marked constitutes grand jury records that are not subject to the Act and need not be released. To the extent that the remaining 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. To the extent the remaining information is not held by the department as an agent of the grand jury, such information must be released with the exception of the driver's license numbers we have marked under section 552.130 of the Government Code.

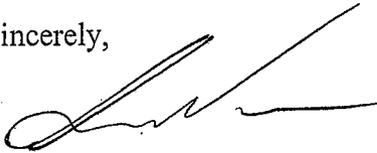
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>1</sup>The Office of the Attorney General will generally raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 345047

Enc. Submitted documents

c: Requestor  
(w/o enclosures)