



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2009

Ms. M. Ann Montgomery  
Assistant Ellis County & District Attorney  
1201 North Highway 77, Suite 104  
Waxahachie, Texas 75165-7832

OR2009-07715

Dear Ms. Montgomery:

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# 345118.

The Palmer Police Department (the "department") received two requests from two requestors for information pertaining to a specified automobile accident. You indicate you will release some information to the requestors. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that most of the requested information was the subject of two previous requests for information, in response to which this office issued Open Records Letter No. 2009-03769 (2009). In that ruling we concluded that the department may withhold information pertaining to the specified automobile accident pursuant to section 552.108(a)(1) of the Government Code. You do not indicate that there has been a change in the law, facts, and circumstances on which the previous ruling is based. Thus, we determine the department may continue to rely on Open Records Letter No. 2009-03769 and withhold the responsive information in the current requests that was previously ruled on in accordance with this prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental

body, and ruling concludes that information is or is not excepted from disclosure). You inform us that the submitted information was not previously ruled upon. Therefore, we will address your arguments against disclosure of the submitted information.

Next, you indicate that a portion of the submitted information 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 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 the department has possession of the information at issue as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to the Act. To the extent that the department does not have possession of the information at issue as an agent of the grand jury, the information is subject to the Act, and we will address your arguments for this information, along with the remaining submitted information, under section 552.108 of the Government Code.

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 governmental body claiming section 552.108 of the Government Code must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal case. Based on this representation, we find 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. 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). Therefore, the department may withhold the submitted information under section 552.108 of the Government Code.<sup>1</sup>

---

<sup>1</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure.

In summary, the department may continue to rely on Open Records Letter No. 2009-03769 for the information previously requested and ruled upon by this office. To the extent that some of the submitted 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. The department may withhold the remaining submitted information under section 552.108 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.

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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/rl

Ref: ID# 345118

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)