



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2009

Mr. George E. Hyde  
Attorney for The City of Victoria  
Denton, Navarro, Rocha & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2009-16298

Dear Mr. Hyde:

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# 362482.

The Victoria Police Department (the "department"), which you represent, received two requests from the same requestor for all information pertaining to a specified investigation involving the requestor's client. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted information responsive to the portion of the second request seeking videos and photographs pertaining to the specified investigation. Therefore, to the extent the requested videos and photographs existed on the date the second request was received, we assume that you have released this information to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

Next, we address your assertion that the requested documents are "tangible evidence" and therefore not "information" for the purpose of the Act. This office has determined that the Act applies to "tangible items such as documents and other 'developed materials.'" Attorney General Opinion JM-640 at 2 (1987). On the other hand, information that has no

significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not subject to the Act. *See* Open Records Decision No. 581 at 5-6 (1990). Here, the requested information consists of written documents, videos, and photographs. Accordingly, we believe the documents, videos, and photographs are "information" for the purpose of the Act. *See* Attorney General Opinion JM-640 at 2 (1987).

Next, you argue a portion of the requested information consists of grand jury records. The judiciary is expressly excluded from the requirements of the Act. 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. 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), 411 (1984), 398 (1983). However, the fact that information collected or prepared by the department is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the department. Information not produced as a result of the grand jury's investigation may be protected from disclosure under one of the Act's exceptions, but it is not excluded from the reach of the Act by the judiciary exclusion. ORD 513 at 4. Upon review, we find that the department has failed to demonstrate how any of the information at issue is held by the department as an agent of the grand jury. Accordingly, we determine that none of the information is in the constructive possession of the grand jury. Therefore, the information at issue is subject to the Act and may only be withheld if it is excepted from disclosure under the Act.

You claim the submitted information is excepted under section 552.108 of the Government Code. Section 552.108(a)(2) 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 it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain, and have provided documentation demonstrating, that a grand jury returned a "no bill" on the case prior to the department's receipt of the current requests. Thus, we find the submitted information pertains to a concluded criminal investigation conducted by the department that did not result in a conviction or deferred adjudication. Accordingly, we agree section 552.108(a)(2) is applicable to the submitted information.

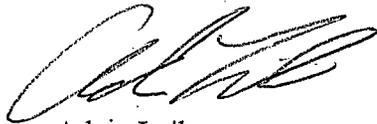
We note, however, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c)

refers to the basic information held to be public in *Houston Chronicle Publishing 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). We note that basic information does not include driver's license numbers. See Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/eb

Ref: ID# 362482

Enc. Submitted documents

c: Requestor  
(w/o enclosures)