



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 29, 2012

Ms. Mary Kay Fischer  
City Attorney  
City of Angleton  
121 South Velasco  
Angleton, Texas 77515

OR2012-07054A

Dear Ms. Fischer:

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# 453351.

You have asked this office to reconsider Open Records Letter No. 2012-07054 (2012), which we issued on May 11, 2012. We note a governmental body is prohibited from asking this office to reconsider a decision issued under section 552.306 of the Government Code. *See* Gov't Code § 552.301(f). Furthermore, you have not demonstrated this office made an error in issuing the prior ruling. Nevertheless, we have determined the prior ruling should be corrected for purposes of due process. *See id.* §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2012-07054 and serves as the correct ruling.

The Angleton Police Department (the "department") received a request for information concerning the arrest or death investigation of a named individual. You state the department has released basic information.<sup>1</sup> You argue the submitted information consists of records of the judiciary and thus, is not public information subject to the Act. In the alternative, you

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<sup>1</sup>Basic information refers to the 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).

claim the submitted information is excepted from disclosure under sections 552.108 and 552.1175 of the Government Code. We have considered your arguments and reviewed the submitted information.

The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B); *see also id.* § 552.0035 (access to judicial records is governed by rules adopted by Supreme Court of Texas or other applicable laws or rules). This office has determined a grand jury, for purposes of the Act, is a part of the judiciary and therefore is 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. The submitted information consists of department records developed in the course of the department's own criminal investigation that were later submitted to a grand jury. Thus, we find this information is held by the department in its own capacity in the course of official business and is, therefore, subject to the Act. *See* Gov't Code § 552.002 (providing that information collected, assembled, or maintained in connection with the transaction of official business by a governmental body is "public information"). Accordingly, we will address the Act's applicability to all of the submitted information.

You raise subsections 552.108(a)(2) and 552.108(b)(2) of the Government Code, which provide:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) 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[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

*Id.* § 552.108(a)(2), (b)(2). Subsections 552.108(a)(2) and 552.108(b)(2) except from disclosure information concerning an investigation that concluded in a result other than a conviction or deferred adjudication. *See id.* § 552.108(a)(2), (b)(2). A governmental body claiming subsection 552.108(a)(2) or 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You explain the submitted information pertains to a case that was presented to the grand jury and resulted in no indictment. You also state the investigation concluded in a result other than conviction or deferred adjudication. Based on these representations, we agree section 552.108(a)(2) of the Government Code is applicable.

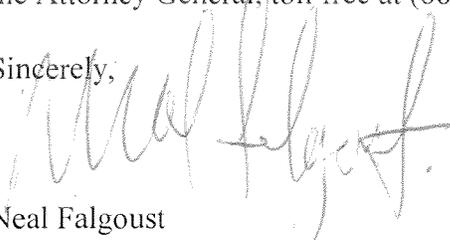
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, the details of the arrest, the physical condition of the arrested person, and a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state you have released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. As our ruling is dispositive, we do not address your remaining claimed exception.

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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a horizontal line at the end.

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/ag

Ref: ID# 453351

Enc. Submitted documents

c: Requestor  
(w/o enclosures)