



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 13, 2017

Mr. Oscar G. Gabaldón, Jr.
Assistant City Attorney
City of El Paso
P. O. Box 1890
El Paso, Texas 79950-1890

OR2017-00998

Dear Mr. Gabaldón:

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# 641788 (City ID# 16-1026-7942).

The El Paso Police Department (the "department") received a request for information pertaining to a specified incident. The department states it will release some information. You claim some of the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). Thus, to the extent the department

¹Although you also raise section 552.101 of the Government Code in conjunction with common-law privacy and constitutional privacy for the submitted information, you provide no arguments explaining how these doctrines are applicable to the information at issue. Therefore, we assume you no longer assert these doctrines. *See* Gov't Code §§ 552.301, .302.

holds the information at issue as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act and the department is not required to release that information in response to the instant request. To the extent the department does not hold the information at issue as an agent of the grand jury, we will address the department's arguments against its disclosure.

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)(1). A governmental body claiming section 552.108(a)(1) must 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). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You state the submitted information pertains to a pending criminal prosecution. Based on your representation, we conclude 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. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, you may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

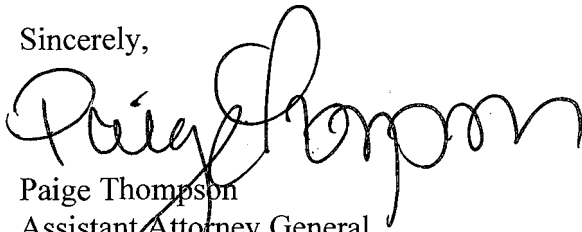
In summary, to the extent the department holds the information at issue as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act and the department is not required to release that information in response to the instant request. With the exception of the basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code.

²As our ruling is dispositive, we need not address the remaining argument against disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 641788

Enc. Submitted documents

c: Requestor
(w/o enclosures)