



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 1, 2016

Ms. Laura Anne Coats
Assistant District Attorney
Dallas County District Attorney's Office
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2016-17177

Dear Ms. Coats:

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# 620731.

The Dallas County District Attorney's Office (the "district attorney's office") received multiple requests from the same requestor for (1) the name, address, and offense(s) of each adult criminal case filed by the district attorney's office on specified dates; (2) the name, address, and offense(s) of each adult grand jury case filed by the district attorney's office on specific dates; and (3) the name, address, offense(s), and disposition for each grand jury case addressed, heard, or held on specific dates. You state the district attorney's office does not maintain some of the requested information.¹ You state the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of

¹The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

information.² We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address your contention you do not have the requested information according to the criteria or format the requestor seeks and complying with the request "is not feasible and would result in substantial interference with the [district attorney's office's] ongoing systems," requiring extensive personnel and programming time. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in response to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2. Further, the Act does not require a governmental body to compile information or prepare new information. *See Bustamante*, 562 S.W.2d 266; ORD 452 at 3. However, we note a governmental body may not refuse to comply with a request on the ground of administrative inconvenience. *See Indus. Found v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Accordingly, a governmental body does have a duty to make a good-faith effort to relate a request for information to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Thus, documents in any format from which the information responsive to the request may be derived are responsive to the request. You have submitted information we understand constitutes a representative sample of the type of information that is responsive to the request. Accordingly, we will consider your arguments against public disclosure of the submitted information.

You assert the submitted information consists of records held on behalf of a grand jury. 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 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 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 therefore are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). However, the fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean 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. Such information, when not produced at the direction of the grand jury, may well be protected under one of the Act's specific

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

exceptions to disclosure; but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Upon review, we find the district attorney's office has failed to demonstrate the submitted information consists of records of the judiciary. Further, we find the submitted information is held by the district attorney's office in its own capacity and, therefore, is subject to the Act. *See* Gov't Code § 552.002 (providing 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 applicability of the Act to the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as article 20.02 of the Code of Criminal Procedure, which provides "[t]he proceedings of the grand jury shall be secret." Crim. Proc. Code art. 20.02(a). In construing article 20.02 of the Code of Criminal Procedure, the types of "proceedings" Texas courts have generally stated are secret are testimony presented to the grand jury and the deliberations of the grand jury. *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, orig. proceeding). Upon review, we find no portion of the submitted information reveals grand jury testimony or deliberations of the grand jury. Therefore, we conclude the district attorney's office may not withhold any of the submitted information under section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure. *Cf.* Open Records Decision No. 513 at 4 (1988) (fact that information collected or prepared by another person or entity is submitted to grand jury does not necessarily mean that such information is confidential in possession of district attorney).

Section 552.108 of the Government Code provides, in part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(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[.]

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). A governmental body claiming sections 552.108(a)(2) or 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code § 552.301(e)(1)(A)* (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state some the information at issue pertains to "cases being investigated by [the district attorney's office]." You further state the remaining information is related to investigations that did not result in conviction or deferred adjudication. However, you have submitted information pertaining to multiple cases. Upon review, we find you have not demonstrated which portions of the information relate to pending criminal investigations or prosecutions, nor have you explained how the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Thus, the district attorney's office has not met its burden under section 552.108(a)(1) or section 552.108(b)(1). Furthermore, you have not demonstrated which portions of the information relate to concluded cases that did not result in conviction or deferred adjudication. Further, we find you have failed to demonstrate how the release of the remaining information would interfere with law enforcement and crime prevention. Thus, the district attorney's office has not met its burden under section 552.108(a)(2) or section 552.108(b)(2). Consequently, the district attorney's office may not withhold any portion of the submitted information under section 552.108 of the Government Code. *See Gov't Code § 552.301(e)(1)(A)* (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Thus, the district attorney's office may not withhold any of the information at issue under section 552.108 of the Government Code. As no other exceptions to disclosure have been raised, the district attorney's office must release the submitted information.

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 'Cristian Rosas-Grillet', with a long horizontal flourish extending to the right.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 620731

Enc. Submitted documents

c: Requestor
(w/o enclosures)