



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2017

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2017-02217

Dear Ms. Sheely:

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# 644019.

The Travis County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident and hearing. You state you have released some information to the requestor. You claim 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 information.¹

Initially, 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 id.* § 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*

¹We assume 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.

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 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 information it has marked 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 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to a closed criminal case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

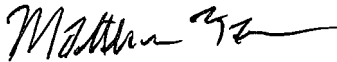
However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which you state you have released, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

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.

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

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 "Matthew Taylor", with a stylized flourish at the end.

Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/bw

Ref: ID# 644019

Enc. Submitted documents

c: Requestor
(w/o enclosures)