



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 10, 2017

Ms. Judy Hickman  
Assistant Supervisor  
Records Division  
Beaumont Police Department  
P.O. Box 3827  
Beaumont, Texas 77704

OR2017-05087

Dear Ms. Hickman

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# 648491.

The Beaumont Police Department (the "department") received a request for the investigative file pertaining to the death of a named individual. You claim some of the submitted information is not subject to the Act. Additionally, you claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1085, 552.1175, 552.130, and 552.137 of the Government Code.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise for information held in a non-employment context. We note the department did not comply with section 552.301 of the Government Code in raising section 552.1085 of the Government Code. *See* Gov't Code § 552.301(b). Nevertheless, because section 552.1085 can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of this section to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>2</sup>We 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.

Initially, we note a portion of the submitted information consists of a grand jury subpoena, which we understand you to assert is not subject to the Act. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined for purposes of the 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 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)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 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.*; *see also id.* § 552.301(e)(1)(A). You inform us the submitted information pertains to a criminal case that concluded in a result other than conviction or deferred adjudication. Based on your representations, we find section 552.108(a)(2) is applicable to the submitted information.

However, as you acknowledge, section 552.108(a)(2) 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* at 3-4. Thus, with the exception of basic information, the department may withhold the submitted information from disclosure under section 552.108(a)(2) of the Government Code.<sup>3</sup>

In summary, to the extent the department holds the grand jury subpoena 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 basic information, which must be

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<sup>3</sup>As our ruling is dispositive, we need not consider the remaining arguments against disclosure of the submitted information.

released, the department may withhold the submitted information from disclosure under section 552.108(a)(2) of the Government Code.

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](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 that reads "Cole Hutchison". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 648491

Enc. Submitted documents

c: Requestor  
(w/o enclosures)