



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 18, 2017

Ms. Michelle Gilbert  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2017-08199

Dear Ms. Gilbert:

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# 653812.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for specified arrest reports pertaining to a named individual. The sheriff's office claims some of the submitted information does not consist of public information subject to the Act. The sheriff's office further claims some of the remaining information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.152 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted information.

Initially, you argue some of the submitted information consists of information of a grand jury. 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 sheriff's office holds the information at issue only 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 sheriff's office is not required to release that information in response to the instant request. However, to the extent the sheriff's office holds the information at

issue in its own capacity and not as an agent of the grand jury, the information is subject to the Act and must be released unless it falls within an exception to disclosure.

Next, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record[.]” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). The sheriff’s office seeks to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the sheriff’s office may not withhold the court-filed documents, which we have marked, under section 552.108. However, because section 552.101 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to the court-filed documents subject to section 552.022(a)(17). Further, we will address the sheriff’s office’s arguments against disclosure of the remaining information.

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). You state the submitted reports and their attachments pertain to an active criminal investigation by the sheriff’s office and a prosecution that is pending with the Williamson County District Attorney’s Office (the “district attorney’s office”). Further, you state the district attorney’s office has requested the information at issue not be released because its release would interfere with the prosecution. Based on these representations, we conclude the release of the information at issue 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 remaining information.

However, we note 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). We note basic information includes, among other items, the names of the arresting officers, but does not include motor vehicle record information encompassed by

section 552.130 of the Government Code. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by section 560.003 of the Government Code, which provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). The information subject to section 552.022(a)(17) of the Government Code contains a fingerprint, which you have marked. There is no indication the requestor has a right of access to the fingerprint under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Accordingly, the sheriff's office must withhold the marked fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You seek to withhold the identifying information of undercover officers from the basic information under section 552.152 of the Government Code. Section 552.152 provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You represent the release of the undercover officers' identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the sheriff's office must withhold the identifying information of the undercover officers, which you have marked, under section 552.152 of the Government Code.

In summary, to the extent the sheriff's office holds the information at issue only as an agent of the grand jury, such information is not subject to disclosure under the Act and the sheriff's office is not required to release that information in response to the instant request. With the exception of the marked court-filed documents subject to section 552.022(a)(17) of the Government Code and the basic information, the sheriff's office may withhold the responsive information under section 552.108(a)(1) of the Government Code. In releasing the marked court-filed documents pursuant to section 552.022(a)(17) of the Government Code, the sheriff's office must withhold the fingerprint you marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. In

releasing the basic information, the sheriff's office must withhold the identifying information of the undercover officers, which you marked, under section 552.152 of the Government Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure of 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 653812

Enc. Submitted documents

c: Requestor  
(w/o enclosures)