



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 1, 2017

Mr. Sterling Harmon
Appellate Chief
Criminal District Attorney's Office
McLennan County
219 North 6th Street, Suite 200
Waco, Texas 76701

OR2017-09292

Dear Mr. Harmon:

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# 655575.

The McLennan County Criminal District Attorney's Office (the "district attorney's office") received a request for documents related to a specified case. You claim some of the submitted information is not subject to the Act. You further claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, the requestor argues some of the submitted information is not responsive to the request. We note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See Open Records Decision No. 561 at 8* (1990). You submitted the information at issue as responsive to the request. Upon review, we find all of the submitted documents to be responsive to the request. We will therefore address the submitted arguments against release of the entirety of the submitted information.

You assert Exhibit E is not subject to the Act because it consists of judicial records. The Act is applicable only to “public information.” *See* Gov’t Code § 552.021. Section 552.002(a) of the Government Code defines “public information” as follows:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). However, section 552.003 provides that, for purposes of the Act, the term “governmental body” does not include the judiciary. *Id.* § 552.003(1)(B). Information that is “collected, assembled, or maintained by or for the judiciary is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules” and is not subject to the Act. *See id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035).

In determining whether information held by a governmental body falls within the judiciary exception to the Act, this office looks to whether the governmental body maintains the relevant records as an agent of the judiciary in a judicial, as opposed to an administrative, capacity. *See* Open Records Decision No. 646 at 3-4 (1996). This office has determined a community supervision and corrections department is a governmental body for purposes of the Act, and its administrative records, such as personnel files and other records reflecting day-to-day management of the department, are subject to the Act. *Id.* at 5. In contrast, specific records held by a community supervision and corrections department that concern individuals who are subject to the direct supervision of a court are not subject to the Act because such records are held on behalf of the judiciary. *Id.*

You state Exhibit E consists of probation records provided to the district attorney's office by the McLennan County Community Supervision and Corrections Department (the "department"). Thus, to the extent Exhibit E is maintained by the district attorney's office on behalf of the judiciary, these records are records of the judiciary and are not subject to the Act. However, to the extent Exhibit E is not maintained by the district attorney's office on behalf of the judiciary, we will consider your arguments against its disclosure.

Next, we note Exhibit B consists of a court-filed document. 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). You seek to withhold Exhibit B 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 district attorney's office may not withhold Exhibit B under section 552.108. However, we will address your 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 remaining information relates to an active criminal prosecution. Based on your representation, 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). Thus, with the exception of Exhibit B, which must be released pursuant to section 552.022(a)(17) of the Government Code, and the basic information, which must be

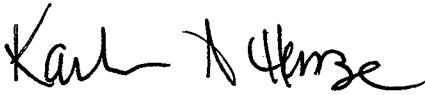
released, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, to the extent Exhibit E is maintained by the district attorney's office on behalf of the judiciary, these records are not subject to the Act. With the exception of Exhibit B, which must be released pursuant to section 552.022(a)(17) of the Government Code, and the basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(1) 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, 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/TN/nmd

Ref: ID# 655575

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information. We note basic information includes an arrestee's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without requesting a decision from this office under the Act. Gov't Code § 552.147(b).