



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2017

Ms. June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2017-14629

Dear Ms. Harden:

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# 663903 (PIR No. 17-46495).

The Office of the Attorney General (the "OAG") received a request for the search warrant and sworn affidavits and complaints submitted in support of the search warrant for a specified case. The OAG claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we must address the requestor's claim the OAG failed to comply with the procedural requirements a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301.

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.

Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, the OAG received the request for information on April 7, 2017. The OAG informs us it was closed on April 14, 2017, and operated on a skeleton crew on April 21, 2017. This office does not count holidays, including skeleton crew days observed by a governmental body, as business days for the purposes of calculating a governmental body's deadlines under the Act. Accordingly, the OAG's ten- and fifteen-business-day deadlines were April 25, 2017, and May 2, 2017, respectively. The information required by sections 552.301(b) and 552.301(e) was delivered to our office on April 25, 2017. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the OAG complied with the requirements of section 552.301 in requesting this decision from our office.

Next, we note the requestor contends the submitted information is not subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Id. § 552.022(a)(1). The requestor contends the submitted information is not subject to section 552.022(a)(1) of the Government Code because she has not "asked for 'a completed report, audit, evaluation[,] or investigation.'" However, the OAG states the submitted information is contained in a completed investigation file, and, therefore, is subject to section 552.022(a)(1). Whether the submitted information is part of a completed investigation file is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See Open Records Decision No. 522 at 4 (1990)*. Therefore, we must accept the OAG's assertion the submitted information is maintained in a completed investigation file subject to section 552.022(a)(1). The OAG must release this

information unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* The OAG raises section 552.108 for the submitted information. Thus, we will consider the applicability of section 552.108 to the submitted information.

Next, we address the requestor's assertion the requested search warrant affidavits are expressly public pursuant to article 18.01(b) of the Code of Criminal Procedure. Article 18.01 of the Code of Criminal Procedure provides in relevant part:

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. Except as provided by [a]rticle 18.011 [of the Code of Criminal Procedure], the affidavit becomes public information when the search warrant for which the affidavit was presented is executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

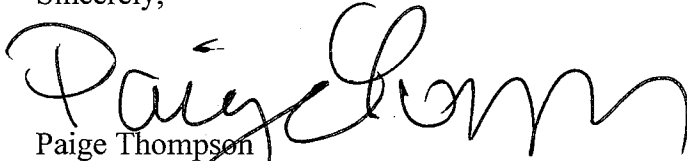
Act of May 22, 2017, 85th Leg., R.S., H.B. 3237, § 1 (to be codified as an amendment to Crim. Proc. Code art. 18.01(b)). We interpret article 18.01(b) of the Code of Criminal Procedure to apply only to magistrate clerks. Accordingly, we find that article 18.01(b) does not make the submitted search warrant affidavits maintained by the OAG expressly public.

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 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 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). The OAG states the information at issue pertains to a concluded criminal investigation conducted by the OAG's Criminal Investigations Division. The OAG states the criminal investigation is closed and no charges were filed. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to the information at issue. Accordingly, the OAG may withhold the submitted information 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, 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/bw

Ref: ID# 663903

Enc. Submitted documents

c: Requestor
(w/o enclosures)