



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 31, 2017

Ms. Debbie F. Harrison
Assistant District Attorney
Collin County
2100 Bloomdale Road, Suite 100
McKinney, Texas 75071

OR2017-19924

Dear Ms. Harrison:

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# 675442.

The Collin County District Attorney's Office (the "district attorney's office") received a request for information related to three specified indictments.¹ The district attorney's office states it does not have some of the requested information.² The district attorney's office also states it will withhold information pursuant to sections 552.130 and 552.147 of the Government Code.³ The district attorney's office claims the submitted information is

¹The requestor clarified his initial request. *See* Gov't Code § 552.222; *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

²The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally* *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*).

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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 the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note some of the submitted information appears to be records 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 a grand jury, for purposes of the Act, is a part of the judiciary and, therefore, not subject to the Act. 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. Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Thus, to the extent the district attorney's office holds the information at issue as an agent of the grand jury, the information consists of records of the judiciary not subject to disclosure under the Act. To the extent the submitted information does not consist of records of the judiciary, we will address the asserted exceptions to disclosure.

Next, we note the submitted information contains court-filed documents that are subject to section 552.022(a)(17) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Although the district attorney's office asserts the information subject to section 552.022(a)(17), which we have marked, is excepted from disclosure under section 552.108, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district attorney's office may not withhold the information subject to section 552.022(a)(17) under section 552.108.

Section 552.108(a) 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: (1) 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 information at issue 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, 710 (Tex. 1977). The district attorney's office states the remaining information relates to pending criminal prosecutions. Based on this representation, we conclude the release of this information 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

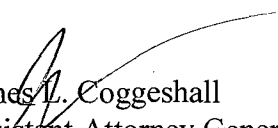
Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

To conclude, if the district attorney's office holds the information at issue as an agent of the grand jury, then the information consists of records of the judiciary not subject to disclosure under the Act. If the submitted information does not consist of records of the judiciary, then the district attorney's office must release the information we have marked under section 552.022(a)(17) of the Government Code and basic information, but may withhold the remaining 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

⁴As our ruling is dispositive, we do not address the other arguments of the district attorney's office to withhold the remaining information, except to note basic information may not be withheld from public disclosure under section 552.103. *See* Open Records Decision No. 597 at 2-3 (1991).

Ref: ID# 675442

Enc. Submitted documents

c: Requestor
(w/o enclosures)