



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 29, 2017

Mr. Billy W. Byrd  
Criminal District Attorney  
Upshur County Criminal District Attorney's Office  
405 North Titus Street  
Gilmer, Texas 75644

OR2017-22363

Dear Mr. Byrd:

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# 677791.

The Upshur County Criminal District Attorney's Office (the "district attorney's office") received two requests from the same requestor for (1) information pertaining to specified attorney fee agreements, and (2) allegations of nepotism at the City of East Mountain. The district attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have also received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, the district attorney's office states some of the submitted information was the subject of a previous request for information in response to which this office issued Open Records Letter No. 2017-15645 (2017). As we have no indication the law, facts, and circumstances on which the prior ruling was based has changed, the district attorney's office may continue to rely on Open Records Letter No. 2017-15645 as a previous determination and withhold or release the information we have marked in accordance with that ruling.<sup>1</sup> *See*

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<sup>1</sup>As we are able to make this determination, we need not address the district attorney's office's argument against disclosure of this information.

Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). For the information that is not subject to Open Records Letter No. 2017-15645, we will consider the district attorney's office's argument against disclosure.

Next, we note the district attorney's office has not submitted information pertaining to specified fee agreements. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, the requestor states "[d]ocuments produced in response to [requests] by the City of East Mountain show that the letter [the requestor] requested from [the district attorney's office] was sent to the City of East Mountain." The requestor asserts "[t]herefore, any exception to releasing the letter has been waived." However, this office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. Furthermore, release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for the purposes of section 552.007 of the Act. *See, e.g.,* Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the district attorney's office does not waive its interests in withholding this information by exercising its discretion under the interagency transfer doctrine.

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 id.* § 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.* §§ 552.108(a)(2), .301(e)(1)(A). The district attorney's office states "none of the requested documents resulted in a conviction or deferred adjudication[.]" Therefore, we agree section 552.108(a)(2) is applicable.

However, section 552.108 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 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information made 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)(2) of the Government Code.

In summary, the district attorney's office may continue to rely on Open Records Letter No. 2017-15645 as a previous determination and withhold or release the information we have marked in accordance with that ruling. With the exception of basic information, which must be released, the district attorney's office may withhold the remaining 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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/tdw

Ref: ID# 677791

Enc. Submitted documents

c: Requestor  
(w/o enclosures)