



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2017

Ms. Anne-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2017-27418

Dear Ms. Sheely:

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# 686323.

The Travis County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified investigation. You claim some of the submitted information is not subject to the Act or excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, you state a portion of the submitted information, which you marked, consists of records of the grand jury. Thus, you argue the information at issue is held by the district attorney's office as the agent of a grand jury and the information is not subject to the Act.

¹We assume that 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.

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). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent the district attorney's office holds the information at issue solely 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 district attorney's office is not required to release that information in response to the instant request.² To the extent the district attorney's office holds the information at issue in its own capacity and not as an agent of the grand jury, we will address your arguments against its disclosure.

Section 552.108 of the Government provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution [is excepted from required public disclosure] if:

²In this instance, as our ruling is dispositive, we need not address the district attorney's office's remaining argument against disclosure for the information at issue.

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body claiming subsection 552.108(a)(4) or (b)(3) of the Government Code must explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108(a)(4), (b)(3), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked consists of the district attorney's office's prosecutors and staff notes, summaries, and internal case preparation and strategies, as well as communications between prosecutors and staff for the district attorney's office. You state this information relates to the prosecution of a crime and reflects the mental impressions and legal theories of attorneys representing the state. Upon review, we find the information you have marked reflects the mental impressions or legal reasoning of attorneys representing the state. Accordingly, we find sections 552.108(a)(4) and 552.108(b)(3) are applicable to the information at issue. Thus, the district attorney's office may generally withhold the information you have marked under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.

We note, however, the requestor is an investigator with the Texas Board of Architectural Examiners (the "board"). Section 411.122(a) of the Government Code provides,

an agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety] criminal history record information [{"CHRI"}] maintained by the [Department of Public Safety] that relates to a person who: (1) is an applicant for a license from the agency; (2) is the holder of a license from the agency; or (3) requests a determination of eligibility for a license from the agency.

Gov't Code § 411.122(a). We note the board is specifically subject to section 411.122 of the Government Code. *See id.* § 411.122(d)(2). In addition, section 411.087(a) of the Government Code provides, in pertinent part:

(a) A person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the

[Department of Public Safety CHRI] maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Thus, under sections 411.122 and 411.087, the requestor may have a right of access to any CHRI about the named individual contained in the district attorney’s office’s records. The information at issue contains CHRI about this individual.

We note the individual whose information is at issue is a holder of a license from the board. Accordingly, the requestor is authorized to obtain the CHRI in the submitted information from the district attorney’s office pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), .122(a). Although you seek to withhold this information under section 552.108 of the Government Code, a specific statutory right of access prevails over the general exceptions to disclosure found in the Act, such as section 552.108. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, the district attorney’s office must make available to the requestor CHRI under section 411.087 of the Government Code.

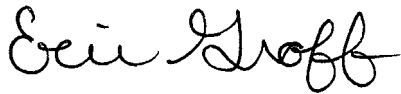
In summary, to the extent the district attorney’s office holds the information you marked solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act and the district attorney’s office is not required to release that information in response to the instant request. The district attorney’s office must make available to the requestor CHRI under section 411.087 of the Government Code. The district attorney’s office may withhold the remaining information you have marked under sections 552.108(a)(4) and 552.108(b)(3) 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,

A handwritten signature in cursive script that reads "Erin Groff".

Erin Groff
Assistant Attorney General
Open Records Division

EMG/sb

Ref: ID# 686323

Enc. Submitted documents

c: Requestor
(w/o enclosures)