



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2019

Ms. Elizabeth Stevens
Assistant General Counsel
Harris County
500 Jefferson, Suite 600
Houston, Texas 77002

OR2019-00762

Dear Ms. Stevens:

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# 745554.

The Harris County District Attorney’s Office (the “district attorney’s office”) received a request for all information relating to the specified arrest of a named individual.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹You state the district attorney’s office sought and received clarification of the request for information. *See* Gov’t Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²We 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 those records contain substantially different types of information than that submitted to this office.

Initially, we note that the requestor has agreed to exclude from his request “confidential information such as [social security numbers], [dates of birth], [driver’s license information], . . . medical records and other similar protected information.” Thus, this information is not responsive to the instant request and need not be released. Moreover, we do not address such information in this ruling.

Next, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-08058 (2017). In that ruling, we determined, in part, the district attorney’s office may withhold certain information under section 552.108(a)(2) of the Government Code but must release basic information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the district attorney’s office may continue to rely on Open Records Letter No. 2017-08058 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, we will address the district attorney’s office’s arguments against disclosure for information not previously ruled upon.

Next, we note the submitted information is 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 submitted information consists of a completed investigation that is subject to section 552.022(a)(1). The district attorney’s office seeks to withhold a portion of this information under section 552.107(2) of the Government Code. Section 552.107(2) allows a governmental body to withhold information if “a court by order has prohibited disclosure of the information.” *Id.* § 552.107(2). However, section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is expressly made confidential under the Act or other law. *See id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the district attorney’s office may not withhold Appendix E under section 552.107(2) of the Government Code.

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 has 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 district attorney's office states the information submitted as Exhibit B relates to a closed criminal investigation conducted by its Civil Rights Division that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to Appendix B.

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 also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the district attorney's office may withhold Appendix B under section 552.108(a)(2) of the Government Code.³

Section 552.108 of the Government Code also 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.

Gov't Code § 552.108(a)(4). A governmental body must explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney's office asserts the information submitted as Appendices C and D consist of internal notations or records prepared by and the mental impressions or legal reasoning of attorneys representing the state.

³As our ruling is dispositive, we need not address the district attorney's office's remaining argument against disclosure of this information.

Based on the district attorney's office's representations and our review, we agree subsection 552.108(a)(4) of the Government Code is applicable to the information at issue. Accordingly, the district attorney's office may withhold Appendices C and D under subsection 552.108(a)(4) of the Government Code.⁴

In summary, the district attorney's office may continue to rely on Open Records Letter No. 2017-08058 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of the basic information, the district attorney's office may withhold Appendix B under section 552.108(a)(2) of the Government Code. The district attorney's office may withhold Appendices C and D under subsection 552.108(a)(4) of the Government Code. The district attorney's office must release the remaining information.

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,



Lecelle Clarke
Attorney
Open Records Division

LC/eb

Ref: ID# 745554

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address the district attorney's office's remaining arguments against disclosure of this information.