



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 18, 2019

Ms. Laura Anne Coats  
Assistant District Attorney  
Dallas County District Attorney's Office  
133 North Riverfront Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2019-10516

Dear Ms. Coats:

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# 760248.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for all information pertaining to a specified case. You claim part of the submitted information consists of judicial records not subject to the Act. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you state some of the submitted information consists of information submitted to 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 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 you indicated solely as an agent of the grand jury, such information consists of records of the judiciary 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.<sup>1</sup> To the extent the district attorney's office holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address your arguments against its disclosure.

Section 552.108 of the Government Code provides, in pertinent 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:

...

(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.

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<sup>1</sup>In this instance, as we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

Gov't Code § 552.108(a)(4), (b)(3). 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). In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993) (orig. proceeding), held "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. You argue the instant request encompasses the district attorney's office's entire prosecution file for the case at issue. Thus, you argue release of the submitted information would reveal the mental impressions or legal reasoning of prosecutors. Based on your representations and our review, we agree sections 552.108(a)(4) and 552.108(b)(3) of the Government Code are applicable to the submitted information.

However, 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 Publishing Co. v. City of Houston* 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which the district attorney's office must release, the district attorney's office may withhold the submitted information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.<sup>2</sup>

In summary, to the extent the district attorney's office holds the information you indicated solely as an agent of the grand jury, such information consists of records of the judiciary 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. With the exception of the basic information, which the district attorney's office must release, the district attorney's office may withhold the submitted information under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code and the court's ruling in *Curry*.<sup>3</sup>

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.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>3</sup>We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the district attorney's office must again seek a decision from this office if it receives another request for the same information from another requestor.

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,

A handwritten signature in black ink, appearing to read "Patrick P. Mehaffy", written over a light blue horizontal line.

Patrick P. Mehaffy  
Assistant Attorney General  
Open Records Division

PPM/gw

Ref: ID# 760248

Enc. Submitted documents

c: Requestor  
(w/o enclosures)