



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 23, 2019

Ms. Julie Pandya Doshier
Counsel for the City of Allen
Nichols, Jackson, Dillard, Hager, & Smith, L.L.P.
500 North Akard Street
Dallas, Texas 75201

OR2019-10681

Dear Ms. Doshier:

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# 761308 (Reference No. 83027).

The City of Allen (the "city"), which you represent, received a request for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes grand jury subpoenas and information obtained pursuant to grand jury subpoenas. 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 city holds the grand jury subpoenas and information obtained through grand jury subpoenas 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 city is not required to release that information in response to the instant request. To the extent the city holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address the arguments against its disclosure.

Next, we note, and you acknowledge, the city failed to comply with section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under sections 552.103 and 552.108 of the Government Code can provide compelling reasons sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Because the city states, and provides documentation demonstrating, the United States Attorney's Office for the Eastern District of Texas (the "U.S. Attorney's Office") objects to the release of the submitted information, we will consider whether the city may withhold this information under sections 552.103 and 552.108 of the Government Code on behalf of the U.S. Attorney's Office. Additionally, because sections 552.101 and 552.152 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider the city's arguments under these sections for the submitted information.

Next, we note the submitted information contains court-filed documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record[.]" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although the U.S. Attorney's Office raises sections 552.103 and 552.108 for the submitted court-filed documents, these exceptions are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); 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 city may not withhold the information subject to section 552.022(a)(17), which we marked, under section 552.103 or section 552.108 of the Government Code. As no exceptions against the disclosure of this information remain, the city must release the marked information subject

to section 552.022(a)(17) of the Government Code. However, we will address the remaining arguments against disclosure of the remaining information.

Section 552.108(a)(1) 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 . . . 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 requested information 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 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The city states the U.S. Attorney’s Office has advised the submitted information is related to an active criminal investigation by its office. The city informs us the U.S. Attorney’s Office objects to disclosure of the information at issue because its release would interfere with its investigation. Based upon this representation, we conclude the release of the information at issue 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 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *See* Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which the city must release, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the U.S. Attorney’s Office.¹

In summary, to the extent the city holds the grand jury subpoenas and information obtained through grand jury subpoenas 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 city is not required to release that information in response to the instant request. The city must release the information we marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which the city must release, the city may withhold

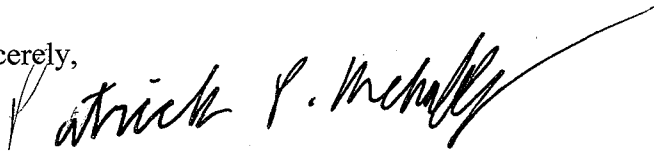
¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103. *See* Open Records Decision No. 597 (1991).

the remaining information under section 552.108(a)(1) of the Government Code on behalf of the U.S. Attorney's Office.

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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/sb

Ref: ID# 761308

Enc. Submitted documents

c: Requestor
(w/o enclosures)