



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 11, 2019

Mr. Robert Schell
Assistant District Attorney
Navarro County
300 West Third Avenue, Suite 301
Corsicana, Texas 75110

OR2019-15625

Dear Mr. Schell:

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# 770096.

The Navarro County Criminal District Attorney (the "district attorney's office") received a request for information pertaining to a specified investigation. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, you state the responsive information includes 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

¹We 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.

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 grand jury subpoenas 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. To the extent the district attorney's office holds the grand jury subpoenas at issue in its own capacity and not solely as an agent of the grand jury, the information is subject to the Act and must be released unless it falls within an exception to disclosure.

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). You state Exhibits B, D, E, F, G, H, I and the information you marked in Exhibit C relate to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to Exhibits B, D, E, F, G, H, I and the information you marked in Exhibit C. Thus, the district attorney's office may withhold Exhibits B, D, E, F, G, H, I and the information you marked in Exhibit C under section 552.108(a)(2) of the Government Code.²

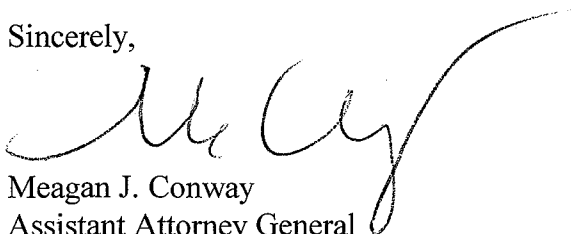
In summary, to the extent the district attorney's office holds the responsive grand jury subpoenas solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the district attorney's office is not required to release that information in response to the instant request. The district attorney's office may withhold Exhibits B, D, E, F, G, H, I and the information you marked in Exhibit C under section 552.108(a)(2) 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.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/be

Ref: ID# 770096

Enc. Submitted documents

c: Requestor
(w/o enclosures)