



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 19, 2019

Mr. Mark Kratovil  
Assistant Criminal District Attorney  
Tarrant County  
401 West Belknap, 9<sup>th</sup> Floor  
Fort Worth, Texas 76196-0201

OR2019-22966

Dear Mr. Kratovil:

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# 781143.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received two requests from the same requestor for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information consists of a grand jury subpoena and information obtained pursuant to a grand jury subpoena. The Act applies only to information that is "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body[.]" Gov't Code § 552.002(a)(1). The judiciary is expressly excluded from the requirements of the Act. *Id.* § 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 records at issue are in the custody of the district attorney's office solely as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. However, to the extent this information is not in the custody of the district attorney's office solely as an agent for the grand jury, we will address your arguments against its 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 the submitted information relates to a closed criminal investigation 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 the submitted information.

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 the remaining information at issue under section 552.108(a)(2) of the Government Code.

In summary, to the extent the records at issue are in the custody of the district attorney's office solely as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. With the exception of the basic information, which must be released, the district attorney's office may withhold the remaining information at issue under section 552.108(a)(2) of the Government Code.

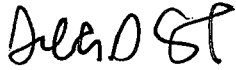
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

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charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Deborah Southerland  
Attorney  
Open Records Division

DS/be

Ref: ID# 781143

Enc. Submitted documents

c: Requestor  
(w/o enclosures)