



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2019

Mr. Brent Haynes
Assistant Criminal District Attorney
Galveston County
600 59th Street, Suite 1001
Galveston, Texas 77551

OR2019-27096

Dear Mr. Haynes:

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# 787990.

The Galveston County Criminal District Attorney's Office (the "district attorney's office") received a request for the case file pertaining to a specified investigation involving a named individual. You claim some of the submitted information is not subject to disclosure under the Act. You claim the remaining information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.117, 552.1175, 552.130, and 552.147 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

Initially, you assert the grand jury subpoenas and information obtained through grand jury subpoenas you marked consists of judicial records that are not subject to the Act. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B); *see also id.* § 552.0035 (access to judicial records is governed by rules adopted by Supreme Court of Texas or other applicable laws or rules). This office has determined a grand jury, for purposes of the Act, is a part of the judiciary and therefore is not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records

¹Although you also raise section 552.107 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn your claim under this exception. *See* Gov't Code §§ 552.301, 552.302.

in the constructive possession of the grand jury and therefore are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also 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. You state the information you marked consists of documents obtained by the district attorney's office at the direction of the grand jury. You also state this information is maintained by the district attorney's office solely as an agent of the grand jury. Based on your representations, we conclude the information you marked consists of judicial records not subject to the Act, and the district attorney's office need not release it in response to this request.

Next, you state the remaining information includes police officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You state an officer's TCOLE

identification number is a unique computer-generated number assigned to a peace officer for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the officers' TCOLE numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the officers' TCOLE numbers are not subject to the Act and need not be released to the requestor.

Section 552.108 of the Government Code 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). 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 state the instant request for information encompasses the district attorney's office's entire prosecution file. You argue release of the information at issue would reveal the mental impressions or legal reasoning of an attorney representing the state in the course of preparing for criminal litigation. Based on these representations and our review of the submitted information, we agree section 552.108(a)(4) is applicable to the requested information.

We note, 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*. *See* 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 made public by *Houston Chronicle*). Thus, with the exception of basic information, the district attorney's office may withhold the remaining

information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.²

In summary, the grand jury subpoenas and information obtained through grand jury subpoenas you marked are not subject to the Act, and the district attorney's office need not release this information in response to this request. The officers' TCOLE numbers are not subject to the Act, and the district attorney's office need not release them in response to this request. With the exception of basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(4) of the Government Code and the court's ruling in *Curry*.

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 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/jxd

Ref: ID# 787990

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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