



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 13, 2019

Mr. Matthew Entsminger  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78711-2548

OR2019-32022

Dear Mr. Entsminger:

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# 796807.

The Travis County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case. You state the district attorney's office will release some information. 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 representative sample of information.<sup>1</sup>

Initially, we note the submitted 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 collected or prepared by another person or entity is submitted to the grand jury

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<sup>1</sup> We 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 that those records contain substantially different types of information than that submitted to this office.

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 information 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. 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); Open Records Decision No. 434 (1986). You represent the information at issue relates to closed criminal investigations and prosecutions by the district attorney's office that did not result in convictions or deferred adjudications. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

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). Section 552.108(c) refers to the basic "front-page" 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). Accordingly, with the exception of basic information, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.

In summary, to the extent the district attorney's office holds the 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. With the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>2</sup>

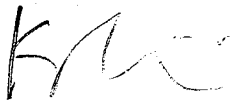
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<sup>2</sup> We note the requestor has a right of access to some of the information being released pursuant to section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(k) (parent of child victim of abuse or neglect has right of access to information otherwise confidential under section 261.201(a) of the Family Code), (l)(2) (providing any information excepted from required disclosure under the Act or other law must be withheld from disclosure). If the district attorney's office receives another request for this information from a different requestor, the district attorney's office must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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# 796807

Enc. Submitted documents

c: Requestor  
(w/o enclosures)