



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 18, 2019

Mr. Bill Delmore  
Assistant District Attorney  
Montgomery County District Attorney's Office  
207 West Phillips, 2nd Floor  
Conroe, Texas 77301

OR2019-35853

Dear Mr. Delmore:

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# 804209

The Montgomery County District Attorney's Office (the "district attorney's office") received a request for information pertaining to two specified incidents involving a named individual.<sup>1</sup> You state some of the submitted information is not subject to the Act. Additionally, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments reviewed the submitted information.

Initially, we note the district attorney's office has only submitted an affidavit and grand jury testimony in response to the request for information. We assume, to the extent any additional responsive information existed when the district attorney's office received the request for information, the district attorney's office has released it. If not, then the district attorney's office must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

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<sup>1</sup> We note the district attorney's office sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

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 apart 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 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 Appendix D consists of grand jury testimony. You explain this information is held by the district attorney's office as an agent of a grand jury. Based on your representations, and our review of the information at issue, we conclude Appendix D consists of judicial records not subject to the Act and the district attorney's office need not release it in response to this request.<sup>2</sup>

Section 552.108(a)(2) of the Government Code exempts 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 state Appendix C pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue. Accordingly, the district attorney's office may withhold Appendix C under section 552.108(a)(2) of the Government Code.

In summary, Appendix D consists of judicial records not subject to the Act and the district attorney's office need not release it in response to this request. The district attorney's office may withhold Appendix C 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.

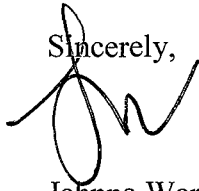
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open

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<sup>2</sup> As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

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,

A handwritten signature in black ink, appearing to read 'Jahna Ward', with a large loop at the beginning and a trailing flourish.

Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/be

Ref: ID# 804209

Enc. Submitted documents

c: Requestor  
(w/o enclosures)