



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 23, 2020

Mr. Parris Long
Public Information Coordinator II
City of Dallas
1500 Marilla Street, Suite 5DS
Dallas, Texas 75201

OR2020-11645

Dear Mr. Long:

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# 823831.

The City of Dallas (the "city") received a request for information pertaining to a specified case.¹ You state you will release some information to the requestor. You further state you will withhold certain information pursuant to section 552.147 of the Government Code and Open Records Decision No. 684 (2009).² Further, you state the city will redact dates of birth pursuant to Open Records Letter No. 2017-09757 (2017).³ You claim the submitted

¹ The city provides documentation showing it 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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision. See ORD 684.

³ Open Records Letter No. 2017-09757 is a previous determination issued to the city authorizing it to withhold the dates of birth of city employees under section 552.102 of the Government Code and the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. See Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.⁴

Initially, we note the submitted information contains grand jury indictments. 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 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. Accordingly, to the extent the city holds the information at issue solely as an agent of the grand jury, such information, which we marked, consists of records of the judiciary that are not subject to disclosure under the Act, and the city is not required to release that information in response to the instant request. Conversely, to the extent the city holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address your arguments against its disclosure. We will also address your argument against disclosure of the remaining information.

Section 552.116 of the Government Code provides,

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

⁴ 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 those records contain substantially different types of information than that submitted to this office.

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You assert the remaining information in Exhibit B consists of audit working papers pertaining to an audit conducted by the City Auditor's Office in accordance with its Fraud, Waste, and Abuse Policy. You explain the requested "attachments [or] exhibits" are not part of the June 2010 final audit report but are "supporting investigative file documentation . . . prepared and maintained in conducting an audit or preparing an audit report." You state, and provide documentation demonstrating, the audit was authorized by City Council Resolution Number 98-0751, as well as Chapter IX, Section 3 of the Dallas City Charter, and Administrative Direction 2-14. *See id.* § 552.116(b)(1). Based on your representations and our review, we find the remaining information in Exhibit B constitutes audit working papers. Therefore, the city may withhold the remaining information in Exhibit B under section 552.116 of the Government Code.

In summary, to the extent the city holds the submitted grand jury indictments solely as an agent of the grand jury, such information, which we marked, consists of a record of the judiciary that is not subject to disclosure under the Act, and the city is not required to release that information in response to the instant request. The city may withhold the remaining information in Exhibit B under section 552.116 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

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,

Pearlie Gault
Attorney
Open Records Division

PG/gw

Ref: ID# 823831

Enc. Submitted documents

c: Requestor
(w/o enclosures)