



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 29, 2020

Mr. Tony Paul
Assistant District Attorney
Denton County
P.O. Box 2344
Denton, Texas 76202

OR2020-12183

Dear Mr. Paul:

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# 822041 (PIR No. 20-086).

The Denton County District Attorney's Office (the "district attorney's office") received a request for a copy of the court reporter's record for a specified criminal case. You claim the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. Additionally, you state, and provide documentation showing, the district attorney's office has notified an individual of the right to submit comments to this office stating why the submitted information should not be released. *See* Gov't Code 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the notified individual. We have considered the arguments and reviewed the submitted representative sample of information.¹

You contend the submitted information constitutes records of the judiciary. The Act is applicable to information "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by a governmental body. *Id.* § 552.002(a)(1). However, the Act's definition of "governmental body" "does not include the judiciary." *Id.* § 552.003(1)(B). Information "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but is instead "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and

¹ This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov’t Code § 552.003(1)(B) prior to enactment of Gov’t Code § 552.0035). In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether the governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative functions. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ)). Upon review, we find you have failed to demonstrate the submitted information consists of judicial records maintained by the district attorney’s office solely on behalf of the judiciary. Therefore, this information is subject to the Act and may only be withheld if it is excepted from disclosure under the Act. Accordingly, we will consider your remaining argument against disclosure of the submitted information.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of “information that is also contained in a public court record[,]” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(17). Although you assert the information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the submitted information may not be withheld under section 552.103. As no further exceptions to disclosure have been raised, the district attorney’s office must release the submitted information.

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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/eb

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Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)