



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 30, 2020

Mr. Ricardo Vela, Jr.  
Assistant District Attorney  
Dallas County Criminal District Attorney's Office  
133 North Riverfront Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2020-12215

Dear Mr. Vela:

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# 825427.

The Dallas County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, as follows:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

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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.

Gov't Code § 552.022(a)(3). The submitted information includes information in contracts relating to the receipt or expenditure of funds by Dallas County that is subject to section 552.022(a)(3). Such records must be released unless they are made confidential under the Act or other law. *See id.* You seek to withhold this information under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary exceptions and do 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the information subject to section 552.022, which we marked, may not be withheld under section 552.103 or section 552.108 of the Government Code. However, because section 552.101 of the Government Code makes information confidential under the Act, we will consider its applicability to the information at issue. Additionally, we will consider the arguments of the district attorney's office for the information that is not subject to section 552.022 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue pertains to a pending criminal investigation. Based upon your representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information that is not subject to section 552.022(a)(3) of the Government Code. Accordingly, the district attorney's office may withhold the information that is not subject to section 552.022(a)(3) of the Government Code under section 552.108(a)(1).<sup>2</sup>

However, we note the requestor is a representative of the Dallas County Public Defender's Office (the “public defender's office”). Section 411.1272 of the Government Code provides:

The Office of Capital and Forensic Writs and a public defender's office are entitled to obtain from the [Texas Department of Public Safety (“DPS”)] criminal history record information [(“CHRI”) maintained by the [DPS] that relates to a criminal case in which an attorney compensated . . . by the public defender's office has been appointed.

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

Gov't Code § 411.1272. In addition, section 411.087 of the Government Code provides, in part, as follows:

(a) Unless otherwise authorized by Subsection (e), a person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by the [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state CHRI maintained by that criminal justice agency that relates to that person.

*Id.* § 411.087(a)(2). CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). Thus, the requestor is authorized to obtain the CHRI in the information at issue from the district attorney’s office pursuant to sections 411.087(a)(2) and 411.1272 of the Government Code if it relates to a criminal case in which an attorney compensated by the public defender’s office is appointed. *See id.* §§ 411.087(a)(2), .1272. Although you raise section 552.108 of the Government Code for this information, we note a statutory right of access generally prevails over the Act’s general exceptions to disclosure. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Accordingly, if the district attorney’s office determines the information at issue relates to a criminal case in which an attorney compensated by the public defender’s office is appointed, then the district attorney’s office must release the CHRI. Conversely, if the district attorney’s office determines the information at issue does not relate to a criminal case in which an attorney compensated by the public defender’s office is appointed, then the district attorney’s office need not release the CHRI to the requestor.

We understand you to assert the information subject to section 552.022(a)(3) of the Government Code is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 20.02(a) of the Code of Criminal Procedure. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses article 20.02(a) of the Code of Criminal Procedure, which provides “[t]he proceedings of the grand jury shall be secret.” Crim. Proc. Code art. 20.02(a). Article 20.02, however, does not define “proceedings” for purposes of subsection (a). The Fourth Court of Appeals in *In re Reed* addressed the issue of what constitutes “proceedings” for purposes of article 20.02(a) and stated the term “proceedings” could “reasonably be understood as encompassing matters that take place before the grand jury, such as witness testimony and deliberations.” *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, orig. proceeding). Upon review, we find you have not demonstrated the information subject to section 552.022(a)(3) of the Government Code reveals grand jury testimony or deliberations of the grand jury. Therefore, we conclude the district attorney’s office may not withhold the information subject to section 552.022(a)(3) of the Government

Code under section 552.101 of the Government Code in conjunction with article 20.02 of the Code of Criminal Procedure.

In summary, the district attorney's office must release the information we marked subject to section 552.022(a)(3) of the Government Code. If the district attorney's office determines the information at issue relates to a criminal case in which an attorney compensated by the public defender's office is appointed, then the district attorney's office: (1) must release the CHRI to this requestor, and (2) may withhold the remaining information not subject to section 552.022(a)(3) of the Government Code under section 552.108(a)(1) of the Government Code. If the district attorney's office determines the information at issue does not relate to a criminal case in which an attorney compensated by the public defender's office is appointed, then the district attorney's office may withhold the information not subject to section 552.022(a)(3) of the Government Code under section 552.108(a)(1) 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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/gw

Ref: ID# 825427

Enc. Submitted documents

c: Requestor  
(w/o enclosures)