



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2020

Ms. Justine Tan
Assistant Criminal District Attorney
Galveston County Criminal District Attorney's Office
600 59th Street, Suite 1001
Galveston, Texas 77551

OR2020-15332

Dear Ms. Tan:

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# 831372 (PIR Ref. SFHS (Perkins)).

The Galveston County Criminal District Attorney's Office (the "district attorney's office") and the Galveston County Medical Examiner's Office (the "medical examiner's office") (collectively, the "county") each received a request from the same requestor for several categories of information pertaining to a specified criminal prosecution and the death of a named individual. You state some information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information includes grand jury subpoenas and information obtained pursuant to the 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 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 county holds this information solely as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act.¹ To the extent the county holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address the county's arguments against its disclosure.

Next, the county states, and we agree, most of the remaining information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2018-24364 (2018) and 2018-27859 (2018) to the district attorney's office and Open Records Letter Nos. 2018-22624 (2018) and 2018-27085 (2018) to the medical examiner's office. We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the district attorney's office may rely on Open Records Letter Nos. 2018-24364 and 2018-27859, and the medical examiner's office may rely on Open Records Letter Nos. 2018-22624 and 2018-27085, as previous determinations and withhold or release the identical information in accordance with those rulings.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the instant request is not identical to the information ruled upon by this office in those rulings, we will address the county's arguments against disclosure.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the

¹ In this event, as we are able to make this determination, we need not address the county's remaining arguments against disclosure of this information.

² As we are able to make this determination, we need not address the county's remaining arguments against disclosure of this information.

pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

The county states, and provides documentation demonstrating, the information at issue is related to a pending criminal prosecution by the district attorney's office and the district attorney's office objects to disclosure of the information at issue because its release would interfere with the prosecution. Based on these representations and our review, 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). Accordingly, we find the county may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.³

In summary, to the extent the county holds the submitted grand jury subpoenas and information obtained pursuant to the grand jury subpoenas solely as an agent of the grand jury, such information is in the grand jury's constructive possession and is not subject to disclosure under the Act. The district attorney's office may rely on Open Records Letter Nos. 2018-24364 and 2018-27859, and the medical examiner's office may rely on Open Records Letter Nos. 2018-22624 and 2018-27085, as previous determinations and withhold or release the identical information in accordance with those rulings. The county may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

Finally, the district attorney's office and the medical examiner's office ask this office to issue previous determinations that would permit the district attorney's office and the medical examiner's office to withhold certain information without the necessity of requesting a decision from this office. *See* ORD 673 (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such previous determinations at this time. Accordingly, this letter ruling is limited to the particular information at issue in these requests 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

³ As our ruling is dispositive, we do not address the county's remaining arguments against disclosure, nor do we address the applicability of section 1701.661(a) of the Occupations Code to the responsive video recordings. *See generally* Occ. Code § 1701.661(a), (e).

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/mo

Ref: ID# 831372

Enc. Submitted documents

c: Requestor
(w/o enclosures)