



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2020

Ms. Tracey L. Jennings
Civil Chief
Wichita County Criminal District Attorney's Office
900 7th Street, Room 352
Wichita Falls, Texas 76301

OR2020-26045

Dear Ms. Jennings:

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# 849479 (ORR# 02409).

The Wichita County Criminal District Attorney's Office (the "district attorney's office") received a request for certain information pertaining to the requestor's client, and specified statements and reports. The district attorney's office states it released some information to the requestor. The district attorney's office claims some of the submitted information is not subject to the Act. The district attorney's office also claims the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

The district attorney's office argues some of the submitted information constitutes judicial records not subject to the Act. The Act applies only to information that is "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body[.]" Gov't Code § 552.002(a)(1). The Act generally requires the disclosure of information maintained by a governmental body. *Id.* A governmental body under the Act "does not include the judiciary." *Id.* § 552.003(1)(B). However, in Open Records Decision No. 646 (1996), this office determined a community supervision and corrections department is a governmental body for purposes of the Act, and its administrative records such as personnel files and other records reflecting the day-to-day management of the department are subject to the Act. ORD 646 at 5; *see also Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ) (in determining whether governmental entity falls within judiciary exception, this office looks to whether governmental entity maintains relevant records as agent of

judiciary with regard to judicial, as opposed to administrative, functions). In contrast, specific records held by a community supervision and corrections department that concern individuals who are on probation and subject to the direct supervision of a court are not subject to the Act, because such records are held on behalf of the judiciary. ORD 646 at 5. The district attorney's office states the information at issue consists of records of the judiciary. However, the information at issue indicates it was written, produced, collected, or assembled by the district attorney's office in connection with its official business and is maintained by the district attorney's office for its own purposes. Consequently, we determine the district attorney's office failed to establish the information at issue was collected, assembled, or maintained by or for the judiciary. Accordingly, the submitted information is subject to the Act, and we will consider the submitted arguments against its disclosure.

We understand the district attorney's office to assert the submitted information is excepted under section 552.108 of the Government Code as interpreted by *Holmes v. Morales*. See 924 S.W.2d 920 (Tex. 1996). In *Holmes*, the Texas Supreme Court held the plain language of section 552.108 did not require a governmental body to show release of the information would unduly interfere with law enforcement. *Id.* at 925. The *Holmes* case further held "section 552.108's plain language makes no distinction between a prosecutor's 'open' and 'closed' criminal litigation files" and concluded the Harris County District Attorney may withhold his closed criminal litigation files under that exception. *Id.* Subsequent to the interpretation of section 552.108 in *Holmes*, the Seventy-fifth Legislature extensively amended section 552.108. See Act of June 1, 1997, 75th Leg., R.S., ch. 1231, § 1, 1997. As amended, section 552.108 now expressly requires a governmental body to explain, among other things, how release of the information would interfere with law enforcement. Accordingly, the court's ruling in *Holmes*, which construed former section 552.108, is superseded by the amended section 552.108.

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). The district attorney's office states the submitted information relates to a pending criminal prosecution. The district attorney's office also states a case related to the submitted information resulted in the conviction of one of the suspects at issue. However, the district attorney's office asserts the information pertaining to this conviction is so intertwined with the pending prosecution, that it cannot be easily separated. Thus, the district attorney's office states release of the information at issue would interfere with the detection, investigation, and prosecution of crime. Based on this 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). Therefore, section 552.108(a)(1) is applicable to the submitted information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.¹

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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/jm

Ref: ID# 849479

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information. We note the information being released contains social security numbers. 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 Gov't Code § 552.147(b).