



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 19, 2020

Mr. Eric C. Farrar  
Counsel for the City of Stafford  
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2727 Allen Parkway, Suite 600  
Houston, Texas 77019-2133

OR2020-26246

Dear Mr. Farrar:

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# 849778 (Reference No. PD-582-2020).

The City of Stafford (the "city"), which you represent, received a request for information pertaining to a specified incident involving the requestor. You state you have released some information to the requestor. You state you will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information consists of a grand jury subpoena and information obtained through the grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. *See* 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 Decision Nos. 513 (1988), 411, 398 (1983). The fact that information collected or

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redact such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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 id.* § 552.147(b).

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 city holds the grand jury subpoena and information obtained through the grand jury subpoena solely as an agent of the grand jury, such information 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.<sup>2</sup> 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.

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 submitted information pertains to an active criminal investigation. Based upon 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). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, we note, and you acknowledge, 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). Thus, with the exception of basic information, which you state you have released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

In summary, to the extent the city holds the grand jury subpoena and information obtained through the grand jury subpoena solely as an agent of the grand jury, such information consists of records of the judiciary that are not subject to disclosure under the Act, and the city is not required to release the information in response to the instant request. With the exception of basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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<sup>2</sup> In this instance, as we are able to make this determination, we need not address your arguments against disclosure of this information.

<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of 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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/jxd

Ref: ID# 849778

c: Requestor