



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2020

Mr. John Stuart Fryer
County Attorney
Lavaca County
P.O. Box 576
Hallettsville, Texas 77964

OR2020-27622

Dear Mr. Fryer:

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# 852582.

Lavaca County (the "county") received a request for two categories of information pertaining to audio/visual services at the Lavaca County Courthouse (the "courthouse"). You state the county does not possess some of the requested information.¹ You claim some of the requested information is not subject to the Act. Additionally, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B); *see also id.* § 552.0035 (access to judicial records is governed by rules adopted by Supreme Court of Texas or other applicable laws or rules). This office has determined a grand jury, for purposes of the Act, is a part of the judiciary and therefore is not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

² 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.

in the constructive possession of the grand jury and therefore are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also 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. You state the requested information includes recordings of a grand jury. You explain this information is held by the county as an agent of a grand jury. Based on your representations, we conclude the information at issue consists of judicial records not subject to the Act and the county need not release it in response to this request.

Section 552.101 of the Government Code 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 section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act ("HSA"). Section 418.182(a) of the Government Code provides, in relevant part, as follows:

"information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential."

Id. § 418.182(a). The fact that information may be related to a governmental body's security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The submitted information consists of security surveillance video recordings and access logs of the courthouse. We understand the surveillance cameras at issue are part of the courthouse's security system which is used to protect public and private property from acts of terrorism or related criminal activity. You state release of the submitted surveillance camera footage would reveal vulnerabilities in the surveillance system, including camera location and angle, video quality and clarity, and surveillance coverage. Additionally, you state release of the access logs would reveal how often and for how long the security system is accessed and monitored. Upon review, we find the submitted information relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.— Austin 2010, no pet.) (finding

confidential under section 418.182 of the HSA video recordings containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included camera's capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the county must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.

In summary, pursuant to section 552.003 of the Government Code, the county is not required to release the requested judicial records. The county must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.182(a) 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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/rm

Ref: ID# 852582

Enc. Submitted documents

c: Requestor
(w/o enclosures)