



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 31, 2022

Mr. David S. Fulton  
Assistant Criminal District Attorney  
Randall County Criminal District Attorney's Office  
2309 Russell Long Boulevard, Suite 120  
Canyon, Texas 79015

OR2022-02804

Dear Mr. Fulton:

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# 927885.

The Randall County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified case. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code. We have considered the exceptions the sheriff's office claims and reviewed the submitted information.

Initially, we note the submitted information contains grand jury subpoenas. 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 judiciary is expressly excluded from the requirements of the Act. *Id.* § 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 records at issue are in the custody of the sheriff's office solely as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. However, to the extent this information is not in the custody of the sheriff's office solely as an agent for the grand jury, we will address the sheriff's office's arguments against its disclosure.

Next, we note some of the information at issue is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

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

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The information at issue includes search warrants and return and inventories that were filed with a court and are subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* The sheriff's office seeks to withhold the information subject to section 552.022(a)(17) under sections 552.107 and 552.108 of the Government Code. We note section 552.108 is discretionary in nature and does not make information confidential under the Act. *See* 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 court-filed documents at issue may not be withheld under section 552.108 of the Government Code. Section 552.107(2) allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). However, section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is expressly made confidential under the Act or other law. *Id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the sheriff's office may not withhold the court-filed documents under section 552.107(2). However, because section 552.101 of the Government Code can make information confidential under the Act, we will consider the applicability of this section to the submitted search warrants and return and inventories subject to section 552.022(a)(17).<sup>1</sup> We will also consider the sheriff's office's submitted arguments for the remaining information.

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: (1) release of the information would interfere with the

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). ‘

detection, investigation, or prosecution of crime.” *Id.* § 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). The sheriff’s office states the remaining information pertains to a criminal prosecution in which the defendant was convicted, and the conviction was affirmed on appeal. The sheriff’s office also states, as of the date it received the instant request, the Seventh Court of Appeals has not issued a mandate in this case, and the defendant’s deadline to file a petition for discretionary review with the Court of Criminal Appeals has not run. Thus, the sheriff’s office asserts release of the submitted information would interfere with the detection, investigation, or prosecution of crime. Based upon these representations and our review, we conclude 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 remaining information.

However, 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the court-filed search warrants and return and inventories, which must generally be released pursuant to section 552.022(a)(17) of the Government Code, and the basic information, which must generally be released, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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. This section encompasses information protected by other statutes, such as chapter 55 of the Code of Criminal Procedure. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and

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

(3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in relevant part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

*Id.* art. 55.04, § 1. This office has previously determined that the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). In this instance, the sheriff’s office states, and provides documentation showing, one of the original arrestees was found to be innocent and the records pertaining to that arrestee’s involvement in this case have since been expunged. Based on the sheriff’s office’s representations and our review, we agree that any information identifying this individual is confidential under article 55.03 of the Code of Criminal Procedure. Accordingly, in releasing the search warrants, the return and inventories, and the basic information about this incident, the sheriff’s office must withhold any information identifying the individual whose criminal records have been expunged.<sup>3</sup>

In summary, to the extent the grand jury subpoenas are in the custody of the sheriff’s office solely as an agent for the grand jury, these records are in the grand jury’s constructive possession and are not subject to the Act. With the exception of the court-filed search warrants and return and inventories, which must be released pursuant to section 552.022(a)(17) of the Government Code, and the basic information, which must be released, the sheriff’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code. However, in releasing the search warrants, the return and inventories, and the basic information, the sheriff’s office must withhold any information identifying the individual whose criminal records have been expunged under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure.

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.

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/mo

Ref: ID# 927885

Enc. Submitted documents

c: Requestor  
(w/o enclosures)