



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 10, 2022

Mr. Ricardo Vela, Jr.
Assistant District Attorney
Dallas County District Attorney's Office
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2022-03879

Dear Mr. Vela:

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# 930011 (Ref. No. D002929-111121).

The Dallas County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident. You claim some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. In addition, you claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information includes a grand jury indictment. 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

¹ 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.

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 district attorney's office holds the grand jury indictment solely as an agent of the grand jury, such information consists of a record of the judiciary that is not subject to disclosure under the Act and the district attorney's office is not required to release that information in response to the instant request. To the extent the district attorney's office does not hold the grand jury indictment solely as an agent of the grand jury, we will address the argument against its disclosure.

Next, we note the remaining information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The district attorney's office seeks to withhold the information at issue under sections 552.108 and 552.130 of the Government Code. We note section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district attorney's office may not withhold the court-filed documents, which we indicated, under section 552.108. However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will consider its applicability to the court-filed documents subject to section 552.022(a)(17). We will also address the district attorney's office arguments against disclosure of 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 . . . 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 remaining information pertains to an active criminal investigation or prosecution. 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). Thus, section 552.108(a)(1) is applicable to the remaining 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). We note basic information does not include dates of birth or motor vehicle

record information subject to section 552.130. See ORD 127 at 3-4. Thus, with the exception of the basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

Next, we note some of the records subject to section 552.022 of the Government Code includes information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. Accordingly, the district attorney's office must withhold the license plate number, state of issuance, and vehicle identification number in the information at issue under section 552.130 of the Government Code.

In summary, to the extent the district attorney's office holds the grand jury indictment solely as an agent of the grand jury, such information consists of a record of the judiciary that is not subject to disclosure under the Act and the district attorney's office is not required to release that information in response to the instant request. The district attorney's office must release the court-filed documents we indicated pursuant to section 552.022(a)(17) of the Government Code; however, in releasing these documents, the district attorney's office must withhold the license plate number, state of issuance, and vehicle identification number under section 552.130 of the Government Code. With the exception of the basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(1) 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/be

² As our ruling is dispositive for this information, we need not address your remaining claimed exceptions nor the applicability of section 1701.661(a) of the Occupations Code to the submitted body worn camera video recordings. *See generally* Occ. Code § 1701.661(a), (e).

Ref: ID# 930011

c: Requestor