



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 25, 2022

Ms. Lori Robinson  
Counsel for the City of Lakeway  
Bickerstaff Heath Delgado Acosta LLP  
3711 South MoPac Expressway, Suite 300  
Austin, Texas 78746

OR2022-05868

Dear Ms. Robinson:

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# 932557.

The City of Lakeway (the "city"), which you represent, received a request for information related to thefts and crime trends in the city during the past year.<sup>1</sup> You state the city has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note some of the submitted information consists of grand jury subpoenas and information obtained through grand jury subpoenas. 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

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<sup>1</sup> You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup> 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 those records contain substantially different types of information than that submitted to this office.

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 city holds the grand jury subpoenas and information obtained through grand jury subpoenas 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>3</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 Exhibit B pertains to active criminal investigations or prosecutions. 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 Exhibit B.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit C pertains to closed cases that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to Exhibit C.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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

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<sup>3</sup> In this instance, as our ruling is dispositive, we need not address your arguments against disclosure of this information.

Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code or dates of birth. *See id.* at 3-4. Thus, with the exception of basic information, which must be released, the city may withhold Exhibit B under section 552.108(a)(1) of the Government Code and may withhold Exhibit C under section 552.108(a)(2) of the Government Code.<sup>4</sup>

In summary, to the extent the city holds the grand jury subpoenas and information obtained through grand jury subpoenas 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. With the exception of basic information, which must be released, the city may withhold Exhibit B under section 552.108(a)(1) of the Government Code and may withhold Exhibit C under section 552.108(a)(2) 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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/mo

Ref: ID# 932557

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup> As our ruling is dispositive, we need not address your remaining arguments against the information at issue.