



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2022

Ms. Hannah Bell
Assistant Criminal District Attorney
Tarrant County
401 West Belknap Street
Fort Worth, Texas 76196

OR2022-13927

Dear Ms. Bell:

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# 947877.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received a request for: (1) information pertaining to the number of cases investigated by the Public Integrity Unit during a stated time period and (2) communications sent to or from named individuals regarding a specified topic. The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the district attorney's office has only information related to the second category of the instant request. The district attorney's office has not submitted information responsive to the first category of the request. Although The district attorney's office states it has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information the district attorney's office has submitted for our review. This ruling does not authorize the district attorney's office to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the first category of the request existed on the date the district attorney's office received the request, we assume the district attorney's office

has released it. If the district attorney's office has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note some of the submitted information includes a grand jury indictment and a subpoena. 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). Thus, to the extent the district attorney's office holds the information at issue 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 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 holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will consider any applicable exceptions to the information at issue.

Next, we must address the district attorney's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The district attorney's office received the original request for information on February 4, 2022. The district attorney's office received clarification of the information requested on February 22, 2022. *See id.* § 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). The district attorney's office does not inform us it was closed for any business days between February 22, 2022, and March 8, 2022. Accordingly, the district attorney's office was required to provide the information required by section 552.301(b) by March 8, 2022. However, the envelope in which the district attorney's office provided the information required by sections 552.301(b) was postmarked March 9, 2022. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the district attorney's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal

presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The district attorney’s office claims sections 552.101 and 552.108 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the district attorney’s office’s arguments under this exception against release of the submitted information. Further, sections 552.1175, 552.130, 552.136, and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness.¹ Therefore, we will address the applicability of these exceptions to the submitted information. However, we find the district attorney’s office has failed to establish a compelling reason to address its remaining claimed exception.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code also encompasses article 20A.202(a) of the Code of Criminal Procedure, which provides “[g]rand jury proceedings are secret.”² Crim. Proc. Code art. 20A.202(a). However, article 20A.202 does not define “proceedings” for purposes of subsection (a). The Fourth Court of Appeals in *In re Reed* addressed the issue of what constitutes “proceedings” for purposes of the statutory predecessor of article 20A.202 and stated the term “proceedings” could “reasonably be understood as encompassing matters that take place before the grand jury, such as witness testimony and deliberations.” *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, orig. proceeding).

Subsequent to the ruling in *Reed*, the 80th Legislature, modeling federal law, added the statutory predecessor to subsection (b) of article 20A.202. *See* Crim. Proc. Code art. 20A.202; FED. R. CRIM. P. 6(e)(6) (“Records, orders, and subpoenas relating to grand jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.”). Article 20A.202(b) states “[a] subpoena or summons relating to a grand jury proceeding or investigation must be kept secret to the extent and for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” Crim. Proc. Code art. 20A.202(b). However, this provision does not define or explain what factors to consider in making such a determination, and even if we considered article 20A.202 to be a confidentiality provision, information withheld under this statute would be secret only “for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” *Id.*

The district attorney’s office seeks to withhold the responsive information under article 20A.202. However, we conclude district attorney’s office has not explained how the

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

² We understand the district attorney’s office to raise article 20A.202, rather than the former article 20.02 of the Code of Criminal Procedure.

matters upon which the information at issue were based are still “before the grand jury” to warrant keeping the information secret. Thus, upon review of article 20A.202 and related case law, it is not apparent, and district attorney’s office has failed to otherwise explain, how this provision makes the information at issue confidential. *See* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Therefore, the district attorney’s office may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with article 20A.202 of the Code of Criminal Procedure.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “federal judges and state judges as defined by section 1.005, Election Code[.]” *Id.* § 552.1175(a)(13); *see also* Elec. Code § 1.005. We note, for purposes of section 552.1175, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *Cf.* Gov’t Code § 552.117(c) (providing that “family member” has meaning assigned by Fin. Code § 31.006(d)). Therefore, to the extent the information we have marked pertains to an individual subject to section 552.1175 of the Government Code who elects to restrict access to her information in accordance with section 552.1175(b) of the Government Code, it must be withheld from disclosure under section 552.1175(a)(13) of the Government Code. To the extent the individual at issue is not subject to section 552.1175 or does not elect to restrict access to his information in accordance with section 552.1175(b), the district attorney’s office may not withhold the marked information under section 552.1175(a)(13).

Section 552.130 of the Government Code 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 id.* § 552.130. Accordingly, the district attorney’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the district attorney’s office must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore,

the district attorney's office must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, to the extent the district attorney's office holds the information at issue 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 district attorney's office is not required to release that information in response to the instant request. To the extent the information we have marked pertains to an individual subject to section 552.1175 of the Government Code who elects to restrict access to her information in accordance with section 552.1175(b) of the Government Code, it must be withheld from disclosure under section 552.1175(a)(13) of the Government Code. The district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The district attorney's office must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The district attorney's office must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The district attorney's office must release the remaining 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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/be

Ref: ID# 947877

Enc. Submitted documents

c: Requestor
(w/o enclosures)