



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 13, 2022

Mr. Santos Hinojosa  
Assistant District Attorney – Civil Division  
Brazoria County  
111 East Locust, Suite 408A  
Angleton, Texas 77515

OR2022-16960

Dear Mr. Hinojosa:

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# 952646 (ORR# 22-0788, 22-0789, 22-0790, 22-0806, 22-0896, 22-0918, and 22-0919).

The Brazoria County District Attorney’s Office and the Brazoria County Sheriff’s Office (collectively, the “county”) received seven requests from different requestors for information pertaining to a specified case. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information consists of grand jury subpoenas and information obtained pursuant to the grand jury subpoenas. The Act is applicable to information “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. *See id.* § 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 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 information at issue is only held by the county acting as an agent of the grand jury and is in the constructive possession of the grand jury. Accordingly, we find the information at issue consists of records of the judiciary that are not subject to release under the Act, and the county need not release the information you indicated in response to these requests.<sup>1</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. See Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. See *id.* §§ 552.108(a)(2), .301(e)(1)(A). You assert the remaining information relates to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Based upon your representation, we conclude section 552.108(a)(2) 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." *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the county may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to

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<sup>1</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

We note portions of the basic information reveal the identity of a sexual assault victim. In this case, we note the identity of the victim, as well as some details of the alleged sexual assault, may be contained in documents that are a matter of public record and which are in the public domain. Thus, to the extent such information is in the public domain, we conclude the county may not withhold the identity of the victim under section 552.101 of the Government Code in conjunction with common-law privacy. *See Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication); *see also Cox Broad. Corp. v. Cohn*, 420 U.S. 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54.57 (Tex. 1992) (“Trial proceedings are public information . . . the law cannot recall information once it is in public domain.”). Upon review, we find the information we have marked and indicated satisfies the standard articulated in *Industrial Foundation*. Accordingly, the county must generally withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the information we have marked and indicated is in the public domain, the county may not withhold it under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, pursuant to section 552.003 of the Government Code, the information you indicated is not subject to the Act and need not be released in response to these requests. With the exception of basic information, which must generally be released, the county may withhold the remaining information under section 552.108(a)(2) of the Government Code. In releasing the basic information, the county must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy; however, to the extent such information is in the public domain, the county may not withhold it under section 552.101 of the Government Code on this basis.

Finally, you ask this office to issue a previous determination permitting the county to withhold information related to the case at issue under section 552.108(a)(2) of the Government Code. *See Gov’t Code* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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/jxd

Ref: ID# 952646

Enc. Submitted documents

c: 7 Requestors  
(w/o enclosures)