



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 27, 2022

Mr. Matt Shovlin  
Assistant District Attorney  
County of Denton  
P.O. Box 2344  
Denton, Texas 76202

OR2022-29859

Dear Ms. Shovlin:

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# 974672 (ORR No. 22-417).

The Denton County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified case number. We understand the district attorney's office will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers under section 552.147(b) of the Government Code.<sup>1</sup> 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.

You state the submitted information includes a grand jury subpoena and information obtained pursuant to the grand jury subpoena. 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

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

by another person or entity acting solely 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 inform us the district attorney's office holds the information at issue as an agent of the grand jury. Therefore, if the district attorney's office holds the grand jury subpoena you indicated and the information obtained pursuant to the grand jury subpoena 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.

The remaining information contains a court-filed document. 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 made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The court filed documents we marked are subject to section 552.022(a)(17). Although you raise sections 552.103 and 552.108 of the Government Code for this information, these are discretionary exceptions that do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.— Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* 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 Application for Grand Jury Subpoena under section 552.103 or section 552.108 of the Government Code. As no other exceptions to disclosure have been raised for this information, the Application for Grand Jury Subpoena must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will consider your arguments for the information at issue not subject to section 552.022 of the Government Code.

Next, we note the remaining information contains information concerning the blood test results of the requestor's blood alcohol content. Section 724.018 of the Transportation Code provides that "[o]n request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. Although you claim the information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, a specific right of access provision prevails over the Act's general exceptions to disclosure. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Therefore, the district attorney's office must release full information relating to the requestor's blood test results pursuant to section 724.018 of the Transportation Code.

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 the remaining information pertains to a pending criminal investigation or prosecution. Based on your representation and our review, we conclude the release of the remaining 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 at issue.

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). 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). Thus, with the exception of basic information, the district attorney’s office may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code.<sup>2</sup>

In summary, if the district attorney’s office holds the grand jury subpoena you indicated and the information obtained pursuant to the grand jury subpoena 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. The district attorney’s office must release the court-filed Application for Grand Jury Subpoena pursuant to section 552.022(a)(17) of the Government Code. The district attorney’s office must release full information relating to the requestor’s blood test results pursuant to section 724.018 of the Transportation Code. With the exception of basic information, which must also be released, the district attorney’s office may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103. *See* Open Records Decision No. 597 (1991).

<sup>3</sup> We note the requestor has a right of access beyond that of the general public to some of the information being released. *See* Transp. Code § 724.018; *see also* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Accordingly, if the district attorney’s office receives another request for this information from an individual other than this requestor, the district attorney’s office must again seek a ruling from this office.

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/pt

Ref: ID# 974672

Enc. Submitted documents

c: Requestor  
(w/o enclosures)