



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2014

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2014-06334

Dear Ms. Armstrong:

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# 520024 (DPD ORR# 2014-00915).

The Dallas Police Department (the "department") received a request for all information pertaining to service number 0206647-Z. The department claims some of the requested information is either not subject to the Act or excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, you assert the information you have marked constitutes records of the judiciary. The Act only applies to information that is "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official

¹Although you do not raise section 552.130 in your brief, we understand you to raise this exception based on your markings in the submitted information.

²We 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.

business” by a governmental body. Gov’t Code § 552.002(a)(1). The Act does not apply to records of the judiciary. *See id.* § 552.003(1)(B) (definition of “governmental body” under Act specifically excludes the judiciary). Information that is “collected, assembled, or maintained by or for the judiciary” is not subject to the Act. *Id.* § 552.0035(a); *see also* TEX. SUP. CT. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) (“function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act”).

You assert the application and court orders to obtain access to electronic communication under seal are not subject to disclosure under the Act pursuant to section 552.003(1)(B). However, upon review, we note the department maintains this information and these records were developed in the course of the investigation at issue. Consequently, we determine the department has failed to establish the records at issue were collected, assembled, or maintained by or for the judiciary. Accordingly, the information at issue is subject to the Act.

We next note some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-14241 (2012). In Open Records Letter No. 2012-14241, we determined the department may withhold the marked information in police report number 0206647-z under section 552.108(a)(1) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the department may rely on Open Records Letter No. 2012-14241 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your arguments against disclosure of the submitted information which was not responsive to the previous request for information.

Section 552.107(2) of the Government Code provides information is excepted from disclosure if “a court by order has prohibited disclosure of the information.”³ Gov’t Code § 552.107(2). Article 18.20 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the interception of wire, oral, or electronic communications; the installation or use of a pen register, ESN reader, trap and trace device, mobile tracking device, or similar equipment; or the disclosure of a stored

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

communication, information subject to an administrative subpoena, or information subject to access under article 18.21 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 18.20, §§ 6, 9; *see also id.* § 1 (defining terms). Section 11 of article 18.20 states “[t]he judge shall seal each application made and order granted under this article.” *Id.* § 11. Article 18.21 of the Code of Criminal Procedure permits a court, on application by a prosecutor, to issue an order authorizing the installation and use of a pen register, ESN reader, trap and trace device, or similar equipment. *See* Crim. Proc. Code art. 18.21, § 2; *see also id.* § 1 (defining terms). Article 18.21 also permits a court to issue an order authorizing the disclosure of contents, records, or other information of a wire or electronic communication. *See id.* § 5. Section 2 of article 18.21 states the court “shall seal an application and order granted under this article.” *Id.* § 2(g).

In this instance, the submitted records contain court orders granted under articles 18.20 and 18.21 and a corresponding application for the orders. You indicate, and the orders and application likewise reflect, that all the documents at issue are filed under seal. As the documents at issue have been sealed by a court pursuant to articles 18.20 and 18.21, we conclude the department must withhold the application and court orders to obtain access to electronic communication under seal under section 552.107(2) of the Government 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state release of the information you have marked would interfere with a pending criminal investigation and prosecution. Based on your representations, we conclude section 552.108(a)(1) is applicable to the marked information. *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 present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the department may withhold the information you have marked under section 552.108(a)(1).⁴

In summary, the department may rely on Open Records Letter No. 2012-14241 as a previous determination and withhold or release the identical information in accordance with that ruling. The department must withhold the application and court orders to obtain access to electronic communication under seal under section 552.107(2) of the Government Code. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must release the remaining information.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 520024

Enc. Submitted documents

c: Requestor
(w/o enclosures)