



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 3, 2014

Ms. Ruhee G. Leonard
Assistant District Attorney
County of Waller
645 12th Street
Hempstead, Texas 77445

OR2014-15450

Dear Ms. Leonard:

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# 534934.

The Waller County District Attorney's Office (the "district attorney's office") received a request for all communications regarding a specified school district superintendent and the administration or board of trustees of the specified school district from August 1, 2013, to the present, as well as all communications regarding the election of the board of trustees of the specified school district from January 1, 2014, to the present. You state you will release some information to the requestor. You claim a portion of the submitted information is not subject to the Act, and the remaining information is excepted from disclosure under

sections 552.108 and 552.111 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

Initially, you state the information in Exhibit E was obtained pursuant to a grand jury subpoena. The judiciary is expressly excluded from the requirements of the Act. Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, 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 therefore are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). You indicate the information in Exhibit E is held by the district attorney's office as an agent of a grand jury. Therefore, the information in Exhibit E consists of records of the judiciary and is not subject to disclosure under the Act, and we do not address its public availability.

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 must reasonably 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 submitted information relates to active criminal investigations and release of the information would interfere with those investigations. *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). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to the information in Exhibit A, Exhibit B, Exhibit C, and Exhibit D. Accordingly, the district attorney's office may withhold the information at issue under section 552.108(a)(1) of the Government Code.²

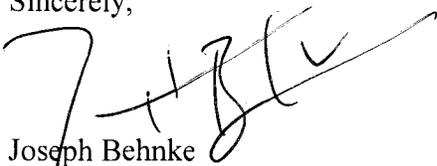
¹Although you also raise section 552.101 of the Government Code in conjunction with section 552.108 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Additionally, although you also raise Texas Rule of Civil Procedure 192.5, we note the proper exception to raise when asserting the attorney work product privilege for information not subject to section 552.022 of the Government Code is section 552.111 of the Government Code. *See* Open Records Decision Nos. 677 (2002), 676 at 1-2, 6 (2002).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 534934

Enc. Submitted documents

c: Requestor
(w/o enclosures)