



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 16, 2015

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
Transactions Division
Travis County District Attorney's Office
P.O. Box 1748
Austin, Texas 78767-1748

OR2015-07394

Dear Ms. Winn:

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# 560407.

The Travis County District Attorney's Office (the "district attorney's office") received a request for six categories of information pertaining to a specified cause number. You claim some of the submitted information is not subject to the Act. Additionally, you claim the submitted information is excepted from disclosure under sections 552.108, 552.111, and 552.130 of the Government Code. We have considered your claims and reviewed the submitted information.¹

Initially, you assert some of the submitted information consists of a grand jury subpoena and information 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 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

¹We 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.

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 records at issue are in the custody of the district attorney's office as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. However, to the extent this information is not in the custody of the district attorney's office as an agent for the grand jury, we will consider your arguments against its disclosure.

We next note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Id. § 552.022(a)(1). The submitted information is part of a completed investigation subject to subsection 552.022(a)(1). The district attorney's office must release this information pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* Although you assert some of this information is excepted from disclosure under section 552.111 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district attorney's office may not withhold any of the submitted information under section 552.111. You also raise section 552.130 of the Government Code, which protects information made confidential under law, and section 552.108 of the Government Code. As previously noted, section 552.022(a)(1) states information subject to that section may be withheld under section 552.108. As such, we will consider the applicability of sections 552.108 and 552.130 to the submitted information that is subject to the Act.

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. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates

to a concluded case that did not result in conviction or deferred adjudication. Based on your representation, we conclude section 552.108(a)(2) is applicable to the submitted information.

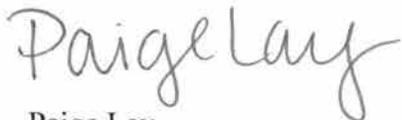
Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 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 made public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

In summary, to the extent the district attorney's office holds the information you have marked 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. With the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

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

Ref: ID# 560407

Enc. Submitted documents

c: Requestor
(w/o enclosures)