



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2016

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2016-10389

Dear Ms. Sheely:

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# 608859.

The Travis County District Attorney's Office (the "district attorney's office") received a request for (1) a specified report created by the Travis County Auditor's Office's (the "auditor's office"); (2) all e-mails sent by the district attorney's office to certain attorneys regarding a specified investigation conducted subsequent to the auditor's office's report; (3) the distribution list for the specified report; and (4) the findings of the investigation, specifically pertaining to a named attorney. The district attorney's office claims the submitted information is not subject to the Act. Alternatively, the district attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, we address the district attorney's office's argument that the submitted information is not subject to the provisions of the Act because they are records of the judiciary. The Act

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.

is applicable to information “written, produced, collected, assembled, or maintained under a law or in connection with the transaction of official business by a governmental body.” Gov’t Code § 552.002(a)(1). However, the Act’s definition of “governmental body” does not include the judiciary. *See id.* § 552.003(1)(B). Information “collected, assembled, or maintained by or for the judiciary” is not subject to the Act but, instead, is “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) of the Government Code prior to enactment of Government Code section 552.0035). Therefore, the Act neither authorizes information held by the judiciary to be withheld, nor does it require such information be disclosed. *See* Open Records Decision No. 25 (1974). The district attorney’s office states the submitted information relates to an audit conducted by the auditor’s office at the direction of certain district judges of Travis County that found billing irregularities of several attorneys appointed to represent indigent clients. The district attorney’s office states some of the submitted information was forwarded to the district attorney’s office at the direction of the auditor’s office for further investigation into the billing irregularities. The district attorney’s office also states some of the submitted information was created by the district attorney’s office in preparation for criminal litigation. Upon review, we find the information at issue is held by the district attorney’s office in its own capacity and, therefore, is subject to the Act. *See* Gov’t Code § 552.002. Accordingly, we will address the applicability of the Act to the information at issue.

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 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). The district attorney’s office states the submitted information relates to a pending criminal prosecution and release of the information would interfere with that prosecution. *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.

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, which must be released, the

district attorney's office may withhold the submitted information under section 552.108(a)(1) 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 608859

Enc. Submitted documents

c: Requestor
(w/o enclosures)