



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2010

Mr. Craig Stoddart
Assistant Criminal District Attorney
Rockwall County Criminal District Attorney's Office
1101 Ridge Road, Suite 105
Rockwall, Texas 75087

OR2010-03759

Dear Mr. Stoddart:

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# 372769.

The Rockwall County Criminal District Attorney's Office (the "district attorney") received a request for information pertaining to a specified case. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information consists of grand jury subpoenas and records obtained pursuant to those grand jury subpoenas. 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. 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. Open Records Decisions Nos. 513 (1988), 411, 398 (1983); *but see* ORD 513 at 4 (defining limits of judiciary exclusion). We therefore conclude that the submitted grand jury subpoenas and the information gathered in response to those subpoenas are in the custody of the district attorney as agent of the grand jury and are not subject to the Act. Thus, this ruling does not address the public availability of this information, which we have marked.²

¹Although you raise section 552.027 of the Government Code, based on the substance of your argument that the submitted documents "contain medical records and information that may be confidential and thus prohibited from release," we understand you to raise section 552.101 of the Government Code.

²As we are able to make this determination, we need not address your arguments against the disclosure of the submitted grand jury records.

Next, we note that one of the remaining documents, which we have marked, is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the district attorney is not required to release that information in response to the request.

We will now address your claim under section 552.108 of the Government Code for the remaining responsive information. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the remaining information pertains to a criminal case that was dismissed due to insufficient evidence. You therefore contend that the criminal case at issue did not result in conviction or deferred adjudication. Based on your representations and our review of the submitted information, we agree that section 552.108(a)(2) is generally applicable to the remaining responsive information.

In this instance, however, the requestor is an investigator with the Texas State Board of Pharmacy (the "board"). Section 411.122(a) of the Government Code provides that

an agency of this state listed in Subsection (d) . . . that licenses or regulates members of a particular trade, occupation, business, vocation, or profession is entitled to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to a person who: (1) is an applicant for a license from the agency; (2) is the holder of a license from the agency; or (3) requests a determination of eligibility for a license from the agency.

Id. § 411.122(a). We note that the board is specifically subject to section 411.122 of the Government Code. *See id.* § 411.122(d)(14). In addition, section 411.087(a) of the Government Code provides in pertinent part:

(a) A person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the [Department of Public Safety] criminal history record information maintained by the [Department of Public Safety] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

Id. § 411.087(a)(2).

“Criminal history record information” is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *See id.* § 411.082(2). In this instance, the remaining responsive information contains “criminal history record information.”

The board represents in its request that the arrestee in the case at issue is a holder of a license from the board. Accordingly, the board is authorized to obtain criminal history record information in the remaining responsive information pursuant to section 411.087(a)(2) of the Government Code. *See id.* §§ 411.087(a)(2), 122(a). Consequently, criminal history record information in the information must be released to the requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

Additionally, 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 Publ'g 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 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of criminal history record information and basic information, which must be released, the district attorney may withhold the remaining responsive information under section 552.108(a)(2).

We note that this office has concluded that information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. In adherence to this policy, this office has concluded that information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); ORD 655, 414 (1984). However, the transfer of confidential information from one governmental body to another is prohibited where the relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which

confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). Section 552.108 of the Government Code does not have specific release provisions governing public release of information. Thus, pursuant to the intergovernmental transfer doctrine, the district attorney has the discretion to release the information subject to section 552.108 to the requestor.

In summary, the grand jury records we have marked are records of the judiciary and are not subject to disclosure under the Act. With the exception of basic information and criminal history record information to which the requestor has a right of access under section 411.087(a)(2) of the Government Code, the department may withhold the remaining responsive information under section 552.108(a)(2) of the Government Code. However, the district attorney has the discretion to release the information subject to section 552.108(a)(2) of the Government Code to this requestor without waiving that exception pursuant to the intergovernmental transfer doctrine.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 372769

Enc. Submitted documents

c: Requestor
(w/o enclosures)