



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 7, 2011

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 79196-0201

OR2011-09665

Dear Ms. Fourt:

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# 423045.

The Tarrant County District Attorney's Office (the "district attorney") received a request for information pertaining to a specified case number.<sup>1</sup> You claim a portion of the submitted information is not public information subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107(2), 552.108, 552.114, 552.115, 552.130, 552.132, 552.1325, 552.136, 552.137, and 552.147 of the Government Code. We have considered your arguments and reviewed the submitted information.<sup>2</sup>

Initially, we address your claim that a portion of the submitted information is not subject to the Act. The Act generally requires the public disclosure of information maintained by a "governmental body." While the Act's definition of a "governmental body" is broad, it

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<sup>1</sup>You inform us the requestor excluded prosecutorial work product and grand jury information from his request.

<sup>2</sup>We assume the "representative samples" of records submitted to this office are 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.

specifically excludes the judiciary. *See* Gov't Code § 552.003(1)(B). In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether the entity is acting in a judicial capacity or solely in an administrative capacity. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.— San Antonio 1983, no writ)).

Chapter 62 of the Government Code, which deals with the judicial branch, provides for the compilation of a list of prospective jurors. *See* Gov't Code §§ 62.001-62.011 (detailing jury list selection methods such as a jury wheel and electronic or mechanical selection). Section 62.012 of the Government Code provides the following:

(a) When a justice of the peace or a county or district judge requires a jury for a particular week, the judge, within a reasonable time before the prospective jurors are summoned, shall notify the county clerk, for a county court jury, or the district clerk, for a justice or district court jury, to open the next consecutively numbered envelope containing a jury list that is in the clerk's possession and has not been opened. The judge shall also notify the clerk of the date that the prospective jurors are to be summoned to appear for jury service.

(b) On receiving the notice from the judge, the clerk shall immediately write on the jury list the date that the prospective jurors are to be summoned to appear and shall deliver the jury list to:

- (1) the sheriff, for a county or district court jury; or
- (2) the sheriff or constable, for a justice court jury.

*Id.* § 62.012. Upon receipt of the jury list, the sheriff summons the prospective jurors to appear on the designated day. *Id.* § 62.013. Chapter 19 of the Code of Criminal Procedure outlines a similar procedure for the selection of prospective grand jurors. In Open Records Decision No. 433 (1986), this office determined that a list of prospective grand jurors is a record of the judiciary because the list is "compiled, and at virtually all times is maintained, by the jury commissioners, the district judge, or the court clerk, all of whom are part of the judiciary or agents thereof." ORD 433 at 2-3. We also found that the sheriff was considered an agent of the judiciary when using the grand jury list to summon the jurors for service. *Id.* However, the district attorney holding a list of names of impaneled jurors was not found to be acting as an agent of the judiciary, since he had "no task to perform with that list." *Id.* at 3. Thus, the list of impaneled jurors held by the district attorney was not within the constructive possession of the judiciary, and was subject to the Act. *Id.*

The information at issue here is held by the district attorney. Based upon the reasoning in Open Records Decision No. 433, we find that the submitted juror information is not a record of the judiciary and is therefore subject to the Act. *See* Gov't Code § 552.021 (Act generally

requires disclosure of information maintained by “governmental body”). Therefore, we will consider your arguments against disclosure for this information along with the remaining information.

Next, we note the submitted information contains court-filed documents. Information filed with a court is generally a matter of public record under section 552.022(a)(17) of the Government Code and may only be withheld if expressly confidential under other law. *See id.* § 552.022(a)(17). You claim the court-filed documents are excepted from disclosure under sections 552.103 and 552.108 of the Government Code. However, sections 552.103 and 552.108 are discretionary exceptions that protect a governmental body’s interests and are, therefore, not “other law” for purposes of section 552.022(a)(17). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the district attorney may not withhold the court-filed documents, which we have marked, under section 552.103 or section 552.108 of the Government Code. The district attorney also raises section 552.107(2) for some of the court-filed documents, which allows a governmental body to withhold information if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). However, section 552.022(b) provides:

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is expressly made confidential under other law.

*Id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the district attorney may not withhold the information at issue pursuant to section 552.107(2). However, we note some of the court-filed documents are subject to section 552.101 of the Government Code, which does constitute “other law” for the purposes of section 552.022. Therefore, we will address section 552.101 for these documents.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find the information we have marked was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” includes indecency with a child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11(a), .011(c)(1) (defining “child” for purposes of Penal Code sections 21.11, 21.011, and 21.021 as a person younger than 17 years of age). Therefore, the information at issue falls within the scope of section 261.201(a). Thus, we conclude the court-filed documents we have marked are confidential pursuant to section 261.201 of the Family Code, and the district attorney must withhold this information under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We next turn to your arguments against disclosure of the remaining submitted information not subject to section 552.022. We have marked information relating to a sex offender subject to registration under chapter 62 of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information to the Texas Department of Public Safety (“DPS”) sex offender registration database: the person’s full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver’s license number; shoe size; home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person’s social security number, driver’s license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, the district attorney must withhold or release the marked information that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b). *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

We now turn to your argument under section 552.108 of the Government Code for the remaining information. Section 552.108(a)(1) 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 pertains to an open investigation of murder. We note there is no statute of limitations for the crime of murder. *See* Crim. Proc. Code art. 12.01(1)(A). Based on your representations and our review, we determine release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *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).

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*, and includes a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the district attorney may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

In summary, the district attorney must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining court-filed documents we have marked must be released pursuant to section 552.022(a)(17) of the Government Code. The district attorney must withhold or release the marked information that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b) of the Code of Criminal Procedure. With the exception of basic information, the district attorney may withhold the remaining 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.

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure, except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eb

Ref: ID# 423045

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)