



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2012

Mr. Scott A. Durfee
Assistant General Counsel
Harris County District Attorney's Office
1201 Franklin, Suite 600
Houston, Texas 77002

OR2012-05815

Dear Mr. Durfee:

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# 451674.

The Harris County District Attorney's Office (the "district attorney's office") received a request for (1) information pertaining to any district attorney's office investigation of members of a specified grand jury, appointed prosecutors, and judges or former judges; (2) a specified voice mail; and (3) photographs of grand jurors taken by investigators. You state the district attorney's office does not possess the requested voice mail or any information pertaining to investigations of appointed prosecutors or judges.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted information that is not responsive to the request for information. The requestor seeks photographs of grand jurors that were taken by

¹The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information not held by or on behalf of the governmental body that received the request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

investigators. You inform us the photographs, which you have submitted as Exhibit B-2, were not taken by investigators. Consequently, the submitted photographs in Exhibit B-2 are not responsive to the instant request. The district attorney's office need not release nonresponsive information in response to this request, and this ruling will not address that information.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state Exhibit B-1 pertains to a concluded criminal investigation conducted by the district attorney's office that did not result in a conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the information at issue. Accordingly, the district attorney's office may withhold Exhibit B-1 under section 552.108(a)(2). As our ruling is dispositive, we need not address your remaining arguments.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 451674

Enc. Submitted documents

c: Requestor
(w/o enclosures)