



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2012

Mr. Scott A. Durfee
Assistant General Counsel
Office of the District Attorney
Harris County
1201 Franklin, Suite 600
Houston, Texas 77002-1901

OR2012-06306

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# 452374.

The Harris County District Attorney’s Office (the “district attorney’s office”) received a request for all documents in the custody of the district attorney’s office pertaining to the investigation of a named individual. You claim the requested 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 representative sample of information.¹

Initially, we note the district attorney’s office may have obtained some of the submitted information pursuant to grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. *See* Gov’t Code § 552.003(1)(B). This office has determined that

¹ We 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.

for purposes of the Act, a grand jury is part of the judiciary and is therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Moreover, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the grand jury and are therefore not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 398 (1983); *but see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* Open Records Decision No. 513 (1988). Therefore, to the extent the district attorney's office has possession of the submitted information as an agent of the grand jury, any such information is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of any such information, which need not be released to the requestor. To the extent the district attorney's office does not have possession of the submitted information as an agent of the grand jury, any such information is subject to the Act and must be released unless the information falls within the scope of an exception to disclosure.

Next, we note some of the submitted information is subject to section 1.012 of the Election Code, which provides in relevant part as follows:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

(c) Except as otherwise provided by this code or [the Act], all election records are public information.

(d) In this code, "election record" includes:

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(3). Some of the submitted information consists of campaign contribution and finance reports filed under the Election Code. *See* Elec. Code §§ 254.031, .061, .091. Therefore, under section 1.012(a) of the Election Code, the submitted campaign contribution and finance reports shall be made available to the public, except as provided by

the Act. Accordingly, we will address your argument against disclosure of these reports, as well as the remaining submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. 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 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 the information at issue relates to a criminal case that was not billed on four matters presented to the grand jury. You further state the case is now closed. Based on your representation, we find that section 552.108(a)(2) is applicable to the information at issue.

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). Section 552.108(c) refers to the basic front-page 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) (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). *See also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, the district attorney's office may withhold the information at issue from disclosure under section 552.108(a)(2) of the Government Code.²

In summary, to the extent the district attorney's office has possession of the submitted information as an agent of the grand jury, any such information is in the grand jury's constructive possession, is not subject to the Act, and need not be released to the requestor. To the extent the submitted information is subject to the Act, with the exception of basic information, the district attorney's office may withhold the requested 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.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

² As our ruling is dispositive, we do not address your remaining arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read 'Ben B', with a stylized flourish extending to the right.

Benjamin A. Bellomy
Assistant Attorney General
Open Records Division

BAB/sdk

Ref: ID# 452374

Enc. Submitted documents

c: Requestor
(w/o enclosures)