



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2012

Mr. Robert J. Davis
Matthews, Stein, Shiels, Pearce, Knott, Eden & Davis, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2012-17352

Dear Mr. Davis:

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# 471126 (File No. 1600-64911).

The Collin County Constable's Office (the "constable's office"), which you represent, received a request for e-mails pertaining to a specified address, four named individuals, and police activity involving an eviction suit, as well as records pertaining to the eviction and all associated cases involving the property at issue or any of its occupants.¹ You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.108, 552.111, and 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it was either created after the request was received or does not consist of the requested information. The constable's office need not release

¹We note the constable's office sought and received clarification of the request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

non-responsive information in response to this request, and this ruling will not address that information.

The Act only applies to information that is “collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body.” Gov’t Code § 552.002(a)(1). The Act does not apply to records of the judiciary. *See id.* § 552.003(1)(B) (definition of “governmental body” under Act specifically excludes the judiciary). Information that is “collected, assembled, or maintained by or for the judiciary” is not subject to the Act. *Id.* § 552.0035(a); *see also* TEX. SUP. CT. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) (“function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act”). You assert some of the responsive information consists of judicial records. However, upon review of the responsive information, we note the constable’s office collected and maintains this information. Consequently, we determine the constable’s office has failed to establish the information at issue was collected, assembled, or maintained by or for the judiciary. Accordingly, the information at issue is subject to the Act and we will address your raised exceptions against disclosure of this information.

We next note the responsive information includes documents that have been filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the information is confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Thus, the court-filed documents, which we have marked, are subject to section 552.022(a)(17). You raise sections 552.103 and 552.108 of the Government Code and the deliberative process privilege under section 552.111 of the Government Code for the marked court-filed documents. However, sections 552.103, 552.108, and 552.111 are discretionary exceptions to disclosure and do not make information confidential 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 Gov’t Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to Gov’t Code § 552.111 subject to waiver), 177 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). Therefore, the marked court-filed documents may not be withheld under section 552.103, section 552.108, or section 552.111. However, we note the court-filed documents contain information that is subject to sections 552.130 and 552.136 of the Government Code, which make information confidential under the Act.² Thus, we will consider the applicability of these sections to the marked court-filed documents. We will

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

also consider your claims under sections 552.103, 552.108, and 552.111, as well as your claims under sections 552.107 and 552.137 of the Government Code for the remaining responsive information that is not subject to section 552.022(a)(17).

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide an affidavit from the Collin County District Attorney’s Office (the “district attorney’s office”) confirming, the information at issue relates to a pending criminal investigation and prosecution. The district attorney’s office objects to disclosure of the information because its release would interfere with the detection, investigation, or prosecution of crime. Based on these representations, we conclude the release of the remaining responsive 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). Therefore, we find the constable’s office may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.³

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator’s or driver’s license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1)-(2). We conclude the constable’s office must withhold the information we have marked in the court-filed documents under section 552.130 of the Government Code.

Section 552.136 of the Government Code states, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). Upon review, we find the constable’s office must withhold the bank account numbers we have marked in the court-filed documents under section 552.136 of the Government Code.

In summary, except for the information we have marked that must be withheld under sections 552.130 and 552.136 of the Government Code, the constable’s office must release the marked court-filed documents pursuant to section 552.022(a)(17) of the Government

³As our ruling is dispositive, we need not address your remaining arguments against its release.

Code.⁴ The constable's office may withhold the remaining responsive 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.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# 471126

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the court-filed documents contain the requestor's driver's license number and his bank account numbers. The requestor has, pursuant to section 552.023 of the Government Code, a special right of access to this information. If the constable's office receives a request for this information from a different requestor, the constable's office is authorized to redact the driver's license number of the requestor under section 552.130(c) and his bank account numbers under section 552.136(c) without the necessity of requesting a decision under the Act. Gov't Code §§ 552.130(c)-(e), 552.136(c)-(e).