



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 12, 2013

Mr. J. Macklin Milligan  
Assistant District Attorney  
Harris County  
1201 Franklin, Suite 600  
Houston, Texas 77002-1901

OR2013-19672

Dear Mr. Milligan:

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# 510004.

The Harris County District Attorney's Office (the "district attorney's office") received a request for the investigation file related to a specified case. You claim some of the requested information is not subject to the Act. In addition, you claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you state Appendix B-4 is maintained by the district attorney's office on behalf of the grand jury. 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. *See* 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. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). Therefore, because the district attorney's office has possession of the information in Appendix B-4 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.

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.

*See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate 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 the remaining submitted information is related to a case the district's attorney's office presented to a grand jury. You explain the grand jury no-billed the case. Thus, you state the remaining submitted information relates to a closed case that did not result in conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) of the Government Code is applicable to the remaining information.

However, we note 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(2).

In summary, Appendix B-4 is in the grand jury's constructive possession, is not subject to the Act, and need not be released to the requestor. With the exception of the basic information, the district attorney's office may withhold the remaining information under section 552.108(a)(2).

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara R. Strain  
Assistant Attorney General  
Open Records Division

TRS/bhf

Ref: ID# 510004

Enc. Submitted documents

c: Requestor  
(w/o enclosures)