



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2014

Ms. Myrna S. Reingold
County of Galveston
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2014-01325

Dear Ms. Reingold:

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# 511674.

The Galveston County Criminal District Attorney's Office (the "district attorney's office") received a request for information relating to criminal cases handled by the district attorney's office, current and former employees of the district attorney's office, and expenditures of the district attorney's office during a specified time period; the total expenses relating to a specified investigation; specified contracts; and specified correspondence. You state the district attorney's office will release some of the requested information upon a response to the cost estimate. Additionally, you state the district attorney's office does not have information responsive to some categories of the request.¹ You inform us the district attorney's office will redact social security numbers pursuant to section 552.147 of the Government Code.² You claim some of the requested information is not subject to the Act. In addition and in the alternative, you claim the submitted information is excepted from

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a 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).

²We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See Gov't Code* § 552.147(b).

disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.1175, 552.136, and 552.137 of the Government Code and privileged under article 39.14 of the Code of Criminal Procedure.³ We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you assert some of the requested information is not subject to the Act because it is held by the district attorney's office as an agent of the grand jury. The judiciary is expressly excluded from the requirements of the Act. *Id.* § 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). However, we note the information at issue was created by and is maintained in the district attorney's office's own capacity. Upon review, we find you have failed to demonstrate 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 consider your arguments against disclosure.

Additionally, you state a portion of the submitted information is not responsive to the request for information because it does not contain the requested cause numbers. However, the information at issue contains the names of special prosecutors, which are responsive to the request for information. Thus, with the exception of the names of the special prosecutors, the information at issue is not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the district

³Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, Texas Rule of Civil Procedure 192.5, and article 39.14 of the Code of Criminal Procedure, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). The proper exceptions to raise when asserting the attorney-client privilege and the attorney work product privilege for information not subject to section 552.022 of the Government Code are sections 552.107 and 552.111 of the Government Code, respectively. Additionally, although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise in this instance because the district attorney's office does not hold the information at issue in an employment context. In addition, although you raise sections 552.130, 552.132, and 552.1325 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claims these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302. Finally, although you raise section 552.024 of the Government Code as an exception to disclosure, this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain personal information relating to the official or employee that is held by the employing governmental body. *See id.* § 552.024.

attorney's office is not required to release non-responsive information in response to this request.

We note a portion of the requested information, which we have marked, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-20181 (2013). In Open Records Letter No. 2013-20181, we concluded the district attorney's office (1) may withhold certain information under section 552.108 of the Government Code; (2) must withhold certain information under section 552.1175 of the Government Code to the extent the peace officer whose information was at issue elected to restrict access to his information in accordance with section 552.1175(b); (3) must withhold certain information under section 552.136 of the Government Code; (4) may withhold certain information under section 552.147 of the Government Code; and (5) must release the remaining information. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, we conclude the district attorney's office must continue to rely on Open Records Letter No. 2013-20181 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, the remaining responsive information you have submitted was not at issue in the previous ruling. Accordingly, we will consider the exceptions you have raised for this information.

We also note the requestor contends the district attorney's office did not submit its request for a decision within the ten-business-day deadline. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). The district attorney's office received the request for information on October 21, 2013. Accordingly, the district attorney's office was required to provide the information required by subsection 552.301(b) by November 4, 2013. The district attorney's office submitted the required information in an envelope meter-marked November 4, 2013. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the district attorney's office complied with the procedural requirements mandated by section 552.301 of the Government Code.

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 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 information you have marked relates to pending criminal prosecutions. Based on your representation and our review, we conclude the release of the information at issue 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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the district attorney's office may withhold the responsive information you have marked under section 552.108(a)(1) of the Government Code.⁴

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you have marked relates to concluded cases that did not result in a conviction or deferred adjudication. Based on your representation, we conclude the district attorney's office may withhold the information you have marked under section 552.108(a)(2) of the Government Code.⁵

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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 id.* § 552.136(a) (defining “access device”). Upon review, the district attorney's office must withhold the information we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We note subsection 552.137(c) provides subsection 552.137(a) “does not apply to an e-mail address provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent.” *Id.* § 552.137(c)(1). Upon review, the

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

district attorney's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. However, the district attorney's office may not withhold any portion of the remaining information under section 552.137 of the Government Code.

In summary, the district attorney's office must continue to rely on Open Records Letter No. 2013-20181 as a previous determination and withhold or release the information at issue in accordance with that ruling. The district attorney's office may withhold the information you have marked under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. The district attorney's office must withhold the information we have marked under section 552.136 of the Government Code. The district attorney's office must withhold the information we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The district attorney's office must release the remaining responsive information.

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, 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 511674

Enc. Submitted documents

c: Requestor
(w/o enclosures)