



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2015

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

OR2015-13995

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# 571022.

The Galveston County Criminal District Attorney's Office (the "district attorney's office") received a request for exhibits presented at the trial of a specified case and a list of such information, as well as photographs, video recordings, and audio recordings from the investigation of the case. You state the district attorney's office will withhold social security numbers pursuant to section 552.147(b) of the Government Code.¹ You state the district attorney's office has released some of the requested information. *See* Gov't Code § 552.007 (governmental body may not withhold information previously released to public unless disclosure prohibited by law or information made confidential under law). You also state the district attorney's office does not maintain information responsive to a portion of the request.² You claim the submitted information is excepted from disclosure under

¹Section 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).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

sections 552.101, 552.108, 552.1085, 552.130, and 552.136 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Initially, the district attorney's office states some of the requested information is available to the requestor on the district attorney's office's website. We note section 552.228 of the Government Code requires a governmental body to provide a requestor with a "suitable copy" of requested public information. *Id.* § 552.228(a). We also note "[a] public information officer does not fulfill his or her duty under the Act by simply referring a requestor to a governmental body's website for requested public information." Open Records Decision No. 682 at 7 (2005). Instead, section 552.221 of the Government Code requires a governmental body "to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail." *Id.*; see Gov't Code § 552.221(b). Thus, the district attorney's office must provide the requestor with access to or copies of the responsive information the district attorney's office states is on its website. However, we note a requestor may agree to accept information on a governmental body's website in fulfillment of a request for information under the Act. *See* ORD 682 at 7.

Next, you argue some of the submitted information is not responsive to the request because it was not admitted into evidence or given an exhibit number at trial. This decision does not address the public availability of the non-responsive information and that information need not be released. However, we note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We note the request also seeks information related to the investigation of the case, including photographs and video recordings. Upon review, we find all of the documents you submitted to be responsive to the request. We will therefore address your claimed exceptions for the entirety of the 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. *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 submitted information relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our

³We note, and you acknowledge, the district attorney's office did not comply with section 552.301 of the Government Code with respect to its claims under sections 552.130 and 552.136. *See* Gov't Code § 552.301(b), (e). Nonetheless, because these exceptions can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

review, we agree the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.⁴

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 571022

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.