



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 8, 2016

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

OR2016-27217

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# 636926.

The Harris County District Attorney's Office (the "district attorney's office") received two requests from the same requestor for six categories of information, including e-mails between certain named individuals.<sup>1</sup> You state the district attorney's office will release some information to the requestor. You also state the district attorney's office has no information responsive to a portion of the request.<sup>2</sup> You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

---

<sup>1</sup>You state the district attorney's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>The 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).

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant requests because it consists of e-mails between individuals other than those named in the requests. This ruling does not address the public availability of the non-responsive information, which we marked, and the district attorney's office need not release it in response to the requests.<sup>3</sup>

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(a)(1) must 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, and provide documentation demonstrating, Exhibits B-1, B-2, and B-3 relate to pending 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 that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the district attorney’s office may withhold Exhibits B-1, B-2, and B-3 under section 552.108(a)(1) of the Government Code.

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 Exhibit B-6 relates to a closed case that did not result in conviction or deferred adjudication. Accordingly, the district attorney’s office may withhold Exhibit B-6 under section 552.108(a)(2) of the Government Code.

In summary, the district attorney’s office may withhold Exhibits B-1, B-2, and B-3 under section 552.108(a)(1) of the Government Code. The district attorney’s office may withhold Exhibit B-6 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.

---

<sup>3</sup>As our determination that this information is not responsive to the request is dispositive, we need not address your argument against disclosure of this information.

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,



Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/akg

Ref: ID# 636926

Enc. Submitted documents

c: Requestor  
(w/o enclosures)