



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 28, 2017

Mr. Robert J. Davis
Counsel for Denton County Sheriff's Office
Matthews, Shiels, Knott, Eden, Davis & Beanland, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2017-29231

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# 690046 (File No. 5010/68234).

The Denton County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.119 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it was created after the sheriff's office received the request for information. This ruling does not address the public availability of the non-responsive information, which we have marked, and the sheriff's office need not release it in response to the request.

Next, we note the submitted responsive information includes court-filed documents, which we have marked, subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). Although you raise sections 552.103 and 552.108 of the Government Code, these are discretionary exceptions and do not make information confidential under the Act. 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 section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, sections 552.103 and 552.108 do not make information confidential for the purposes of section 552.022. Therefore, the court-filed documents we have marked may not be withheld under section 552.103 or section 552.108 of the Government Code. As no further exceptions to disclosure have been raised for this information, it must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will address your arguments for the remaining information not subject to section 552.022.

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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of another law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You state, and provide documentation demonstrating, the Texas Rangers object to release of the submitted information because release would interfere with a pending criminal investigation. Based on this representation, we conclude that section 552.108(a)(1) is applicable in this instance. *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).

However, we note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, the sheriff’s office may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code on behalf of the Texas Rangers.¹

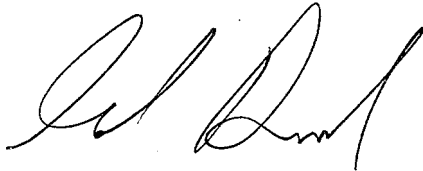
¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, the sheriff's office must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the sheriff's office may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code on behalf of the Texas Rangers.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 690046

Enc. Submitted documents

c: Requestor
(w/o enclosures)