



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 14, 2019

Mr. William Turner  
Public Information Officer  
Texas Commission on Jail Standards  
P.O. Box 12985  
Austin, Texas 78711

OR2019-04335

Dear Mr. Turner:

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# 750188 (ORR 2018-11-2).

The Texas Commission on Jail Standards (the "commission") received a request for documents related to custodial deaths during a specified time period. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. You also state release of the submitted information implicates the interests of the Dallas County Sheriff's Office (the "sheriff's office"). Accordingly, you state, and provide documentation showing, you notified the sheriff's office of the request for information and of its right to submit comments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the sheriff's office. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note a portion of the submitted information is part of a completed investigation subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). Although the sheriff's office raises section 552.103 of

the Government Code for this information, we note section 552.103 is a discretionary exception and does 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As such, the commission may not withhold any of the information at issue under section 552.103. However, information subject to section 552.022(a)(1) may be withheld under sections 552.101 and 552.108 of the Government Code. Accordingly, we will consider the submitted arguments under these exceptions for the submitted information.

Section 552.108(a) 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: (1) 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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *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 any 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 non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a 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.

The sheriff’s office informs us it objects to disclosure of the submitted information because its release would interfere with an ongoing criminal prosecution. Based on this representation, we conclude that the commission may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the sheriff’s office.<sup>1</sup> *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).

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.

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining 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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/eb

Ref: ID# 750188

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)