



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2019

Mr. Michael Shaunessy
Counsel for Bandera County
McGinnis Lochridge, LLP
600 Congress Avenue, Suite 2100
Austin, Texas 78701

OR2019-06076

Dear Mr. Shaunessy:

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# 753753.

The Bandera County Sheriff's Office (the "sheriff's office"), which you represent, received a request for charging documents; complaint; victim and witness statements; and certain evidence pertaining to case number 1-13-004885. You state the sheriff's office does not maintain information responsive to portions of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.102, 552.108, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you inform us some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2018-20343 (2018) and 2018-29336 (2018). You seek to withhold some of the requested

¹The 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).

information pertaining to case number 1-13-004885 pursuant to Open Records Letter No. 2018-20343. In that ruling, we determined the sheriff's office may withhold the responsive information under section 552.108(a)(1) of the Government Code because the information at issue related to a pending criminal investigation. You now inform us the investigation related to case number 1-13-004885 is concluded and claim section 552.108(a)(2) of the Government Code. Thus, we find the circumstances have changed in regard to this information and the sheriff's office may not rely on Open Records Letter No. 2018-20343 as a previous determination in this instance. *See* Open Records Decision No. 673 at 6-7 (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, in Open Records Letter No. 2018-29336, we determined, in relevant part, the sheriff's office may withhold the information pertaining to case number 1-13-004885 it marked under section 552.108(a)(2) of the Government Code. We have no indication the law, facts, or circumstances on which Open Records Letter No. 2018-29336 was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2018-29336, we conclude the sheriff's office may rely on Open Records Letter No. 2018-29336 as a previous determination and withhold the identical information in accordance with that ruling. *See id.* To the extent the submitted information is not identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2018-29336, we will address your arguments against its disclosure.

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. 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); Open Records Decision No. 434 (1986). You state the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the submitted information. Accordingly, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.²

In summary, for the requested information that is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2018-29336, we conclude the sheriff's office may rely on in Open Records Letter No. 2018-29336 as a previous determination and withhold the identical information in accordance with that ruling.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

To the extent the submitted information is not identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2018-29336, the sheriff's office may withhold the submitted information 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.

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/mo

Ref: ID# 753753

Enc. Submitted documents

c: Requestor
(w/o enclosures)