



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 12, 2019

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

OR2019-06822

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# 754299.

Bandera County (the "county"), which you represent, received two requests for information from the same requestor for information pertaining to a named officer; specified radio dispatch recordings, all documents, audio, and video recordings for certain cases; a specified report; and witness statements. We understand you have released some information previously. You state the county does not maintain information responsive to portions of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.102, 552.108, and 552.1175 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should

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<sup>1</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).

not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the county sought and received clarification of the information requested. *See id.* § 552.222 (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) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). The county states it sought additional clarification for some of the information requested. The county states the requestor has not responded to the second request for clarification. Accordingly, we find the county has no obligation at this time to release any information that is responsive to the portions of the request for which it has not received clarification. *See Open Records Decision No. 663 at 5 (1999)* (10-business-day deadline tolled while governmental body awaits clarification in good faith). However, if the requestor responds to the clarification, then the county must seek a ruling from this office before withholding from the requestor any information that would be responsive to the clarification.

Next, 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 information pertaining to case number 1-13-004885 pursuant to Open Records Letter No. 2018-20343. In that ruling, we determined the county 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 county 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 county 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 county 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 concluded in a result other than 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.*; *see also id.* § 552.301(e)(1)(A). You state the submitted information pertains to a criminal case that concluded in a result other than a conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177, 186-88 (Tex. Civ. App.—Houston [14th Dist.] 1975). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the county may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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 county may rely on Open Records Letter No. 2018-29336 as a previous determination and withhold the identical information in accordance with that ruling. 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, with the exception of the basic information, which must be released, the county 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](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

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a long horizontal flourish extending to the right.

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/eb

Ref: ID# 754299

Enc. Submitted documents

c: Requestor  
(w/o enclosures)