



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2019

Mr. Thomas M. Gilliland
Public Information Officer
Harris County Sheriff's Office
1200 Baker Street, 2nd Floor
Houston, Texas 77002-1206

OR2019-09431

Dear Mr. Gilliland:

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# 758258 (File No. 19SO5001253).

The Harris County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident and the arrest of three named individuals, and personnel records of all deputies at the scene of a specified incident. You claim the requested information is excepted from disclosure under sections 552.101 through 552.152 of the Government Code. We have considered the claimed exceptions.

Initially, we note some or all of the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-15380 (2018). In that ruling, the sheriff's office stated it released basic information pursuant to section 552.108(c) of the Government Code, and we determined the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code. Accordingly, to the extent the law, facts, or circumstances on which the prior ruling was based has not changed, the sheriff's office may continue to rely on Open Records Letter No. 2018-15380 as a previous determination and withhold and release the identical information in accordance with that ruling. *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). To the extent the requested information is not identical or the law, facts, or circumstances on which the prior ruling was based has changed, we address your claimed exceptions.

We must address the sheriff's office's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). As of the date of this letter, the sheriff's office has not submitted for our review comments stating why the claimed exceptions apply, or a copy or representative sample of the requested information. Consequently, we conclude the sheriff's office failed to comply with the procedural requirements mandated by section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although the sheriff's office raises exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code. If you believe the information may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

In summary, to the extent the law, facts, or circumstances on which the prior ruling was based has not changed, the sheriff's office may continue to rely on Open Records Letter No. 2018-15380 as a previous determination and withhold and release the identical information in accordance with that ruling. To the extent the requested information is not identical or the law, facts, or circumstances on which the prior ruling was based has changed, the sheriff's office must release the requested information pursuant to section 552.302 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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/eb

Ref: ID# 758258

Enc. Submitted documents

c: Requestor
(w/o enclosures)