



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 18, 2019

Mr. Brent Haynes  
Assistant Criminal District Attorney  
Galveston County  
600 59th Street, Suite 1001  
Galveston, Texas 77551

OR2019-32471

Dear Mr. Haynes:

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# 797241.

The Galveston County Criminal District Attorney's Office (the "district attorney's office") received a request for recorded jail calls involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, the district attorney's office states the information at issue was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2005-00212 (2005) and 2005-04197 (2005). In those rulings, we determined the district attorney's office may withhold the information at issue under section 552.108(a)(2) of the Government Code since it pertained to a closed criminal investigation which did not result in conviction or deferred adjudication with the district attorney's office. The district attorney's office informs us that the named individual is now being tried for murder in another state. Therefore, we find there has been a change in the law, facts, or circumstances on which the previous rulings were based. Consequently, we conclude the district attorney's office may not rely on Open Records Letter Nos. 2005-00212 and 2005-04197 as previous determinations. *See* Open Records Decision No. 673 (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 that information is or is not excepted from disclosure). Accordingly, we will consider the submitted arguments against disclosure of the information at issue.

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: (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 the release of the information at issue 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, 710 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where an agency has custody of information relating to the pending case of a different 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 wishes to have the information withheld. The district attorney’s office has submitted a representation from the Los Angeles County District Attorney’s Office objecting to the release of the information at issue because it pertains to a pending criminal investigation or prosecution. Based on this representations and our review, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, the district attorney’s office may withhold the submitted information on behalf of the Los Angeles County District Attorney’s Office under section 552.108(a)(1) of the Government Code.<sup>1</sup>

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Sean McCormick  
Attorney  
Open Records Division

SMC/eb

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<sup>1</sup>As our ruling is dispositive, we do not address the remaining arguments to withhold this information.

Ref: ID# 797241

Enc. Submitted documents

c: Requestor  
(w/o enclosures)