



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 21, 2019

Mr. Wes Mau  
Criminal District Attorney  
Hays County  
712 South Stagecoach Trail, Suite 2057  
San Marcos, Texas 78666

OR2019-33007

Dear Mr. Mau:

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# 797747 (Ref. No. 19-0697).

The Hays County District Attorney's Office (the "district attorney's office") received a request for five categories of information pertaining to a specified incident. You state you have no information responsive to category number four of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the representative sample of information.<sup>2</sup> 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).

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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), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, the requestor claims the district attorney's office failed to comply with the procedural requirements of the Act in requesting a ruling from this office. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(a) of the Government Code, a governmental body that receives a written request for information that it wishes to withhold from public disclosure must ask for a decision from the attorney general about whether the responsive information is subject to an exception under Subchapter C. *See id.* § 552.301(a). Pursuant to section 552.301(d), the governmental body must provide the requestor, within ten business days after the date of its receipt of the request for information, a statement the governmental body has asked for a decision from the attorney general and a copy of the governmental body's written communication to the attorney general asking for a decision. *See id.* § 552.301(d). Further, pursuant to section 552.301(e-1), a governmental body that submits written comments to the attorney general under section 552.301(e)(1)(A) must, within fifteen business days of receiving the request for information, send a copy of those comments to the person who requested the information from the governmental body. *See id.* § 552.301(e-1). The determination of whether a governmental body mailed copies of correspondence at issue to the requestor is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. ORD 552 at 4. The district attorney's office states, and submits documentation showing, it received the request for information on September 3, 2019. Accordingly, the ten-business-day deadline was September 17, 2019, and the fifteen-business-day deadline was September 24, 2019. The envelope in which the district attorney's office mailed its correspondence to this office under subsections 552.301(b) and (e) is postmarked September 17, 2019. *See* Gov't Code § 552.308(a) (describing rules for calculating submission dates of documents sent via first class United States mail). The brief of the district attorney's office reflects the district attorney's office sent a copy of its correspondence to the requestor concurrent with the timely mailing to this office. Consequently, based on the correspondence of the district attorney's office, we find the district attorney's office complied with section 552.301 of the Government Code in requesting this ruling. Therefore, we will address the submitted arguments against disclosure of the submitted information.

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. *Id.* § 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The district attorney's office states the submitted information relates to a closed criminal investigation that did not result in conviction or

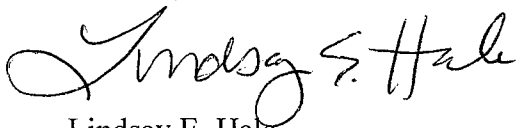
deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *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 district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>3</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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LH/eb

Ref: ID# 797747

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> As our ruling is dispositive, we do not address your remaining arguments to withhold this information.