



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2020

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County Sheriff's Office
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2020-01705

Dear Ms. Lary:

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# 807005.

Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified report. You claim the submitted information is excepted from disclosure under section 552.101, 552.108, and 552.1175 of the Government Code.¹ You state, and provide documentation showing, you notified the Office of the Attorney General (the "OAG") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should

¹ Although you raise section 552.117 of the Government Code for information at issue, we note section 552.1175 of the Government Code is the proper exception to raise for information not held in an employment capacity. *See* Gov't Code §§ 552.117, .1175. Additionally, we note the sheriff's office may have failed to comply with the procedural requirements of section 552.301(b) of the Government Code in requesting a decision from this office with respect to some of the requested information. *See id.* § 552.301(b) (requiring governmental body to ask for ruling and state exceptions that apply within ten business days of receiving written request). Nonetheless, the need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Additionally, because sections 552.101 and 552.1175 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301, we will address the applicability of these exceptions to the submitted information. *See* Gov't Code §§ 552.007, .302

not be released). We have received comments from the OAG. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information 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 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Thus, where an agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

The OAG objects to the release of the submitted information because it pertains to an active criminal investigation being conducted by its Criminal Prosecutions Division, and release of the information would interfere with its current prosecutorial interests. Based on this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Pub’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) 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. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, and includes, among other items, a detailed description of the offense, an identification and description of the complainant, and the location of the crime. *See* 531 S.W.2d at 186-88; *Open Records Decision No. 127 (1976)* (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff’s office may withhold the submitted information under section 552.108(a)(1) on behalf of the OAG.³

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental

² 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 that those records contain substantially different types of information than that submitted to this office.

³ As our ruling is dispositive, we need not address the remaining arguments of the sheriff’s office against disclosure of this information.

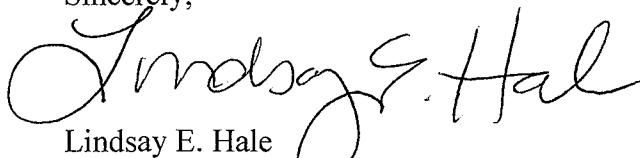
body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the basic information pertains to a peace officer not employed by the sheriff's office. Thus, to the extent the individual at issue elects to restrict access to his information in accordance with section 552.1175(b), the sheriff's office must withhold the information we have marked under section 552.1175.

In summary, with the exception of the basic information, which must be released, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the OAG. However, in releasing basic information, to the extent the individual at issue elects to restrict access to his information in accordance with section 552.1175(b), the sheriff's office must withhold the information we have marked under section 552.1175 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 <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# 805007

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)