



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 12, 2020

Mr. Cary D. Kirby  
County Attorney  
Angelina County  
P.O. Box 1845  
Lufkin, Texas 75902-1845

OR2020-07926

Dear Mr. Kirby:

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# 816399.

The Angelina County Sheriff's Office (the "sheriff's office") received a request for the current balance of the seizure fund, including receipts for any expenditures for a specified time period. You state you released some information to the requestor. You also state the sheriff's office does not have information responsive to some aspects of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

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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).

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information consists of receipts relating to the expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The sheriff's office must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* Although the sheriff's office raises section 552.108 of the Government Code for this information, section 552.108 is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver).* Therefore, the sheriff's office may not withhold any of the submitted information under section 552.108. However, because sections 552.101 and 552.152 of the Government Code can make information confidential for purposes of section 552.022, we will consider the applicability of these exceptions to the information subject to section 552.022.

The sheriff's office seeks to withhold the submitted information under section 552.152 of the Government Code. Section 552.152 provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You state the release of the submitted information would subject the undercover officers to a substantial threat of physical harm. You also argue disclosure of the information at issue would allow criminals "to anticipate the locations and frequencies at which [law enforcement] operations are conducted by the undercover officers." Therefore, we find section 552.152 is applicable to the submitted information. Accordingly, the sheriff's office must withhold the submitted information under section 552.152 of the Government Code.<sup>2</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

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

Mr. Cary D. Kirby - Page 3

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,

A handwritten signature in black ink, appearing to read "Pearlie Gault", with a long horizontal stroke extending to the right.

Pearlie Gault  
Attorney  
Open Records Division

PG/eb

Ref: ID# 816399

Enc. Submitted documents

c: Requestor  
(w/o enclosures)