



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 28, 2020

Mr. James M. Yakovsky  
Assistant County Attorney  
County of Angelina  
P.O. Box 1845  
Lufkin, Texas 75902-1845

OR2020-21710

Dear Mr. Yarkovsky:

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# 841698.

The Angelina County Sheriff's Office (the "sheriff's office") received a request for information pertaining to service calls to a specified address during a stated period of time. You state the sheriff's office has released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the obligations of the sheriff's office 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. Pursuant to section 552.301(e), a governmental body must 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* Gov't Code § 552.301(e). You state the sheriff's office received the present request for information on June 9, 2020. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Accordingly, the sheriff's office was required to provide the information required by subsection 552.301(e) by June 30, 2020. Because the envelope in which the sheriff's office provided the information required by section 552.301(e) bears two postmarks, one of which is dated July 10, 2020, we are unable to determine whether

the sheriff's office timely requested a ruling. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the sheriff's office failed to comply with the procedural requirements mandated by section 552.301 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). 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). Because you inform us the Angelina County Attorney's Office (the "county attorney's office") objects to the release of the information at issue, we will consider whether the sheriff's office may withhold the information at issue under section 552.108 of the Government Code on behalf of the county attorney's office. Additionally, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider your arguments under these sections for 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, 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). You state the county attorney's office objects to release of the information you indicated because it pertains to pending criminal cases and its release would interfere with the pending investigations or prosecutions of the cases. Based on your representations and our review, we conclude the release of the information at issue 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 (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 information at issue.

However, we note 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*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly, with the exception of the basic information, the sheriff's

office may withhold the information you indicated under section 552.108(a)(1) of the Government Code on behalf of the county attorney's office.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 771.061(a) of the Health and Safety Code, which provides "[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity, including a regional planning commission, emergency communications district, or public safety answering point, in providing 9-1-1 service . . . is confidential[.]" Health & Safety Code § 771.061(a). You explain Angelina County is a participating member in a 9-1-1 system operated by the Deep East Texas Council of Governments, which is the Regional Planning Commission for State Planning Region 14 (the "commission"). You state the address and telephone number you marked were provided by the 9-1-1 service supplier to the commission, through which the sheriff's office received the 9-1-1 call at issue in the information. Based on your representations and our review, we conclude the address and telephone number you marked are confidential under section 771.061(a) of the Health and Safety Code and must be withheld under section 552.101 of the Government Code on that basis. *See also* Open Records Decision No. 661 at 1-2 (1999).

In summary, with the exception of the basic information, which you state the sheriff's office has released, the sheriff's office may withhold the information you indicated under section 552.108(a)(1) of the Government Code on behalf of the county attorney's office. The sheriff's office must withhold the address and telephone number you marked under section 552.101 of the Government Code in conjunction with section 771.061 of the Health and Safety Code. The sheriff's office must release the remaining information.

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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/rm

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 841698

Enc. Submitted documents

c: Requestor  
(w/o enclosures)