



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 4, 2020

Ms. Meagan Scott  
Assistant District Attorney  
Harris County  
500 Jefferson Street, Suite 600  
Houston, Texas 77002

OR2020-22460

Dear Ms. Scott:

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# 842149 (ORR Nos. 2020.05-0034 and 2020.06-0055).

The Harris County District Attorney's Office (the "district attorney's office") received two requests from the same requestor for all information regarding the arrest, incarceration, and death of a named individual. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the submitted information includes peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

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<sup>1</sup> Although you also raise sections 552.101 and 552.103 of the Government Code, you provide no arguments explaining how these exceptions are applicable to the information at issue. Therefore, we assume the district attorney's office no longer asserts these exceptions. *See* Gov't Code §§ 552.301, .302.

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

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information;  
or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the submitted TCOLE identification numbers are unique computer-generated numbers assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Therefore, we find the submitted TCOLE numbers do not constitute public information under section 552.002 of the Government Code. Accordingly, the submitted TCOLE numbers are not subject to the Act and the district attorney's office need not release this information to the requestor.<sup>3</sup>

Next, we note the remaining information includes autopsy photographs subject to section 11 of article 49.25 of the Code of Criminal Procedure, which provides:

(a) The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. . . . The records may not be withheld, subject to a discretionary exception under Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or

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<sup>3</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information.

(2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

(b) Under the exception to public disclosure provided by [s]ubsection (a), a governmental body . . . may withhold a photograph or x-ray described by [s]ubsection (a) without requesting a decision from the attorney general under [s]ubchapter G, Chapter 552, Government Code. This subsection does not affect the required disclosure of a photograph or x-ray under [s]ubsection (a)(1) or (2).

Crim. Proc. Code art. 49.25, § 11. We note the submitted autopsy photographs and x-rays pertain to an individual who died while in the custody of law enforcement. Photographs and x-rays taken of the body of a person who died while in the custody of law enforcement are public and not confidential. *Id.* § 11(a)(2). Although you seek to withhold these photographs and x-rays under section 552.108 of the Government Code, this exception to disclosure found in the Act does not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Thus, the district attorney's office must release the submitted autopsy photographs and x-rays pursuant to section 11(a)(2) of article 49.25 of the Code of Criminal Procedure.

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 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 remaining information relates to an ongoing criminal investigation conducted by the Civil Rights Division of the district attorney's office. Based upon this representation, 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, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *See* Gov't Code § 552.108(c). Section 552.108(c) refers to the basic 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). Accordingly, with the exception of basic information,

the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>4</sup>

In summary, the submitted TCOLE numbers are not subject to the Act and the district attorney's office need not release this information to the requestor. The district attorney's office must release the submitted autopsy photographs and x-rays pursuant to section 11(a)(2) of article 49.25 of the Code of Criminal Procedure. With the exception of basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(1) 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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/mooooooooo

Ref: ID# 842149

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.