



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 5, 2020

Mr. Keith R. Bradford  
Assistant County Attorney  
Nacogdoches County  
101 West Main Street, Room 230  
Nacogdoches, Texas 75961

OR2020-25003

Dear Mr. Bradford:

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# 847868.

Nacogdoches County (the "county") received a request for certain information pertaining to a specified incident. You state the county will withhold information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> You further state the county has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. In addition, you state release of the submitted information may implicate the interests of the Texas Rangers Division of the Texas Department of Public Safety (the "Texas Rangers"). Accordingly, you state you notified the Texas Rangers of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released.<sup>2</sup> *See Gov't Code* § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See id.*

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redact such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>2</sup> As of the date of this letter, we have not received any comments from the Texas Rangers explaining why any portion of the submitted information should not be released to the requestor.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, as follows:

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

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

*Id.* § 552.022(a)(1). The submitted information includes completed investigations subject to section 552.022(a)(1) of the Government Code. The county must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.103 of the Government Code for the information at issue, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the county may not withhold the information at issue under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address the county's argument under section 552.108 of the Government Code for the information at issue.

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. *See* Gov't Code § 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). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Record Decision No. 350 at 3-4 (1982). You state the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based upon this representation and our review, we agree section 552.108(a)(2) is applicable to most of the submitted information. However, we note the remaining information pertains to an internal investigation conducted by the Nacogdoches County Sheriff's Office, and is not information that deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication. Thus, we find the county has failed to demonstrate the

applicability of section 552.108(a)(2) to any portion of the remaining information at issue, and the county may not withhold the remaining information on that basis.

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 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). If, as the requestor asserts, the county has not already done so, it must release basic information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception the information we marked for release and basic information, which must be released, the county 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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/mo

Ref: ID# 847868

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Interested Party  
(w/o enclosures)

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<sup>3</sup> As our ruling is dispositive, we do not address the remaining argument against disclosure, including the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).