



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2020

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

OR2020-25107

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# 847849.

The Angelina County Sheriff's Office (the "sheriff's office") received a request from the same requestor for information pertaining to a specified use of force report. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code and privileged pursuant to rule 192.5 of the Texas Rules of Civil Procedure. We have also received and considered comments from the requestor and the Angelina County District Attorney's Office (the "district attorney's office"). *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, the requestor asserts the requested information was previously released. The Act does not permit selective disclosure of information to the public. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Although you raise section 552.111 of the Government Code and Texas Rule of Civil Procedure 192.5 for this information, these provisions do not expressly prohibit release of the information at issue or make information confidential. Additionally, although the district attorney's office seeks to withhold the requested information under section 552.108 of the Government Code, this section is a

discretionary exception to disclosure that protects a governmental body's interests and may be waived. *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). As such, section 552.108 does not expressly prohibit the release of information to the public nor does it make information confidential under the Act. Thus, to the extent the sheriff's office has previously released the information at issue, the sheriff's office may not withhold such information under section 552.108 or section 552.111 of the Government Code or rule 192.5 of the Texas Rules of Civil Procedure. To the extent the information at issue has not been previously released to a member of the public, we will consider the submitted arguments.

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). A governmental body claiming section 552.108 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. 414 at 4-5 (1987). Where a governmental body 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. You state, and provide documentation demonstrating, the district attorney's office objects to release of the submitted information because it relates to its ongoing prosecution. Based on this representation, we conclude the release of the submitted information 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). Accordingly, to the extent the information at issue has not been previously released, the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.¹

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

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

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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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jm

Ref: ID# 847849

Enc. Submitted documents

c: Requestor
(w/o enclosures)