



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2020

Ms. Elizabeth Stevens  
Assistant General Counsel  
Harris County  
500 Jefferson, Suite 600  
Houston, Texas 77002

OR2020-25188

Dear Ms. Stevens:

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# 847607 (ORR# 2020.07-0057-3).

The Harris County District Attorney's Office (the "district attorney's office") received a request for communications sent to or from a named employee pertaining to the present request for information or nine specified cause numbers and copies of discovery produced in relation to the nine specified cause numbers. You state the district attorney's office does not have information pertaining to a portion of the request.<sup>1</sup> The district attorney's office claims the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions the district attorney's office claims.

Initially, we note portions of the requested information were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2020-25047 (2020). In that ruling, we concluded the district attorney's office may withhold the requested information under section 552.108(a)(2) of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2020-25047 was based have changed. Accordingly, to the extent the requested

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<sup>1</sup> We note the Act does not require a governmental body to disclose information that did not exist at the time the governmental body received the request for information. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

information is identical to the information previously requested and ruled upon by this office, the district attorney's office may continue to rely on Open Records Letter No. 2020-25047 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the obligations of the district attorney's office.

We must address the obligations of the district attorney's office under the Act with respect to the information not identical to the information at issue in Open Records Letter No. 2020-25047. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed 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. Gov't Code § 552.301 (e). The district attorney's office states it received the request for information on June 31, 2020. However, as of the date of this letter, you have failed to submit the specific information requested. Consequently, we find the district attorney's office failed to comply with 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). Although the district attorney's office raises exceptions to disclosure, because you have not submitted the remaining requested information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but to order the remaining requested information released pursuant to section 552.302. If you believe the information may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the district attorney's office may continue to rely on Open Records Letter No. 2020-25047 as a previous determination and withhold the identical information in accordance with that ruling. To the extent the requested information is not identical to the information previously ruled upon in Open Records Letter No. 2020-25047, the district attorney's office must release it.

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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jxd

Ref: ID# 847607

c: Requestor