



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 25, 2022

The Honorable Wiley B. McAfee  
District Attorney  
33rd and 424th Judicial Districts  
1701 East Polk Street, Suite 24  
Burnet, Texas 78611

OR2022-11824

Dear Mr. McAfee:

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# 943496.

The 33rd and 424th Judicial District Attorney's Office (the "district attorney's office") received a request for information pertaining to a particular case. You state the district attorney's office has released some information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, which we understand is a representative sample.<sup>1</sup>

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

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

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<sup>1</sup> We assume that 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) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation that is subject to section 552.022(a)(1). The district attorney's office 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 is made confidential under the Act or other law. *See id.* Although you raise sections 552.103 and 552.111 of the Government Code, these sections are discretionary exceptions to disclosure and do not make information confidential under the Act. *See id.* § 552.007; *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 section 552.103); Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). Therefore, the district attorney's office may not withhold the submitted information under section 552.103 or section 552.111 of the Government Code. However, as information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your argument to withhold the information at issue under section 552.108 of the Government Code. Additionally, because section 552.1175 of the Government Code can make information confidential under the Act, we will consider the application of this section to the submitted information.<sup>2</sup>

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. 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); Open Records Decision No. 434 (1986). You state the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the submitted information.

However, 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). Section 552.108(c) refers to the basic 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). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the location of the incident and an arrestee's social security number. *See* ORD 127 at 3-4. Accordingly, with the exception of basic

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information, which must generally be released, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies to "a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003 of the Health and Safety Code[.]" *Id.* § 552.1175(a)(18). Some of the basic information may pertain to an individual subject to section 552.1175(a)(18). Thus, to the extent the individual at issue is a person listed under section 552.1175(a) of the Government Code and the individual elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the district attorney's office must withhold the information we have marked under section 552.1175 of the Government Code.

In summary, with the exception of basic information, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(2) of the Government Code. In releasing the basic information, to the extent the individual at issue is a person listed under section 552.1175(a) of the Government Code and the individual elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the district attorney's office must withhold the information we have marked under section 552.1175 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

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. We also note, regardless of the applicability of section 552.1175 of the Government Code, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). Finally, we note the requestor has a right of access to the information at issue pursuant to section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(k); *but see id.* § 261.201(f)(2). Therefore, if the district attorney's office receives another request for this information from a different requestor, you must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/mo

Ref: ID# 943496

Enc. Submitted documents

c: Requestor  
(w/o enclosures)