



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 6, 2022

Ms. Kaitlin Lopez Cano
Public Information Officer
Texas Commission on Jail Standards
P.O. Box 12985
Austin, Texas 78711

OR2022-27101

Dear Ms. Cano:

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# 969624 (ORR# 2022-7-1).

The Texas Commission on Jail Standards (the "commission") received a request for all records related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the commission's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated 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. *See id.* § 552.301(e). You state the commission received the request for information on June 14, 2022. We understand the commission was closed for business on July 4, 2022. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act.

You do not inform us the commission was closed for any additional business days between June 14, 2022, and July 6, 2022. Accordingly, you were required to provide the information required by section 552.301(b) by June 28, 2022. Moreover, you were required to provide the information required by section 552.301(e) by July 6, 2022. However, you provided the information required by sections 552.301(b) and 552.301(e) via interagency mail on July 1, 2022, and July 12, 2022, respectively. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the commission failed to comply with the procedural requirements mandated by 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 Gov't Code* § 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). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See Open Records Decision No. 586* (1991). Because you inform us the Hardin County Attorney's Office (the "county attorney's office") objects to the release of the information at issue, we will consider whether the commission may withhold the submitted information under section 552.108 of the Government Code on behalf of the county attorney's office. Further, as section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider your arguments under this exception.¹

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(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 county attorney's office objects to release of the information at issue because it relates to its ongoing criminal investigation. Based on 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). Accordingly, the

¹ We note 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 under the Act. *See Gov't Code* § 552.147(b).

commission may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the county attorney's office.²

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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 969624

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.