



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 15, 2022

Ms. Lisa Hulsey
Senior Assistant County Attorney
Harris County Attorney's Office
1019 Congress Street, 15th Floor
Houston, Texas 77002-1700

OR2022-35614

Dear Ms. Hulsey:

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# 984594 (ORR# 22PIA0951).

The Harris County Sheriff's Office (the "sheriff's office") received a request for eight categories of information related to a specified incident. You state you do not have information responsive to portions of the request.¹ We understand you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.1175, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-03576 (2022). In that ruling, we determined: (1) the submitted TCOLE numbers do not constitute

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

² We assume 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 those records contain substantially different types of information than that submitted to this office.

public information under section 552.002 of the Government Code and the sheriff's office need not release such information to the requestor; (2) the sheriff's office must release the submitted custodial death report pursuant to article 49.18(b) of the Code of Criminal Procedure; and (3) with the exception of basic information, which must be released, the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the Harris County District Attorney's Office (the "district attorney's office"). You state there has not been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the sheriff's office must rely on Open Records Letter No. 2022-03576 as a previous determination and withhold or release the identical information in accordance with that ruling.³ See Open Records Decision No. 673 (2001) (so long as law, facts, and 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). However, we will address your arguments against release of the remaining information, which was not responsive to the prior request for information.

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 that claims an exception to disclosure under section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); *ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, we note section 552.108 is generally not applicable to purely administrative records that do 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.) (section 552.108 generally not applicable to law enforcement agency's personnel records); *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 Records Decision No. 350 at 3-4 (1982). You have provided a statement from the district attorney's office's Civil Rights Division demonstrating the remaining information at issue pertains to an active criminal investigation and objecting to release of the information. Based upon this representation and our review, we find 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). Thus, section 552.108(a)(1) is applicable to the remaining information. Accordingly, the sheriff's

³ As we are able to make this determination, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.⁴

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/pt

Ref: ID# 984594

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.