



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 29, 2022

Mr. Robert S. Davis  
Counsel for Harrison County  
Flowers & Davis, P.L.L.C.  
1021 ESE Loop 323, Suite 200  
Tyler, Texas 75701

OR2022-36729

Dear Mr. Davis:

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# 982573.

The Harrison County District Attorney's Office (the "district attorney's office"), which you represent, received requests for information pertaining to the death of a named inmate.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note Exhibit Q consists of a press release. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law, or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the

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<sup>1</sup> You state the district attorney's office sought and received clarification of the requests for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

district attorney's office may not now withhold any previously released information unless its release is expressly prohibited by law, or the information is confidential under law. Although you raise section 552.108 of the Government Code, this section does not prohibit the release of information or make information confidential. *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). Therefore, the press release in Exhibit Q may not be withheld under section 552.108 of the Government Code, and the district attorney's office must release it pursuant to section 552.007 of the Government Code.

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 remaining information. Accordingly, the district attorney's office may withhold the information at issue under section 552.108(a)(2) of the Government Code.<sup>2</sup>

In summary, the district attorney's office must release the press release in Exhibit Q pursuant to section 552.007 of the Government Code. The district attorney's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.

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,

Paige Lay  
Assistant Attorney General  
Open Records Division

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Mr. Robert S. Davis - Page 3

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)