



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 7, 2014

Sgt. Rocky Bright  
Custodian of Records  
Ector County Sheriff's Office  
P.O. Box 2066  
Odessa, Texas 79760

OR2014-05664

Dear Mr. Bright:

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# 518303.

The Ector County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named deputy, including the deputy's photograph, personnel file, and information pertaining to a specified incident, including dash camera videos and radio transcripts. You state the sheriff's office has made some of the requested information available to the requestor.<sup>1</sup> You indicate the sheriff's office will release some of the requested information to the requestor upon his response to a cost estimate. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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

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<sup>1</sup>We note the Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

body claiming section 552.108(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state some of the submitted information relates to a pending criminal investigation and prosecution. Based upon your representation, we conclude release of the information at issue, which we have marked, will 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 sheriff's office may withhold the information we marked under section 552.108(a)(1) 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. *See 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state some of the remaining information, which you have marked, is part of a closed investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, we find the sheriff's office may withhold the information you marked under section 552.108(a)(2) of the Government Code.

You assert the remaining information, which consists of a photograph of a licensed peace officer, should be withheld from disclosure under section 552.119 of the Government Code. Section 552.119 provides as follows:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

(1) the officer is under indictment or charged with an offense by information;

(2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or

(3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

*Id.* § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, release of the photograph would endanger the life or physical safety of a peace officer. Upon review, we find you have failed to demonstrate release of the photograph would endanger the deputy's life or physical safety. Accordingly, we find the sheriff's office may not withhold the photograph at issue under section 552.119 of the Government Code.

In summary, the sheriff's office may withhold the information we marked under section 552.108(a)(1) of the Government Code and the information you marked under section 552.108(a)(2) of the Government Code. The sheriff's office must release the remaining information.

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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 518303

Enc. Submitted documents

c: Requestor  
(w/o enclosures)