



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2015

Mr. Robert Underwood
Counsel for the Panola County District Attorney's Office
Underwood Law Office
P.O. Box 1138
Carthage, Texas 75633

OR2015-04364

Dear Mr. Underwood:

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# 555792.

The Panola County District Attorney's Office (the "district attorney's office"), which you represent, received two requests from the same requestor for multiple categories of information pertaining to the district attorney's office and a specified case, to include related financial documents and bank statements, certain correspondence and memoranda from the district attorney's office, witness statements, and investigation reports. You indicate the district attorney's office does not possess any documents responsive to portions of the request.¹ You claim the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.

Initially, we understand you to assert portions of the requested information are subject to a previous request for information, as a result of which this office issued Open Records Letter No. 2014-22528 (2014). In that ruling, we determined the Panola County Sheriff's Office

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(the “sheriff’s office”) may withhold the responsive information under section 552.108(a)(1) of the Government Code. Although you seek to rely on that prior ruling, that request for information was submitted to the sheriff’s office, which is a different governmental body. Therefore, the district attorney’s office may not rely on our previous ruling to the sheriff’s office as a previous determination for the information at issue. *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).

Next, we note you have only submitted a representative sample of information responsive to the portions of the requests asking for financial documents and bank statements related to the case at issue. However, you have not submitted any information responsive to the remaining categories of the requests, including certain correspondence and memoranda from the district attorney’s office, witness statements, and investigation reports. Although you state the district attorney’s office submitted a representative sample of the requested information, we find the submitted information is not representative of the other types of information to which the requestor seeks access. Please be advised this open records letter applies to only the types of information you have submitted for our review. This ruling does not authorize the district attorney’s office to withhold any information that is substantially different from the type of information you submitted to this office. *See* Gov’t Code § 552.302. Therefore, to the extent information responsive to the remaining portions of the requests exists and was maintained by the district attorney’s office on the date it received the requests, we assume the district attorney’s office has released it to the requestor. If the district attorney’s office has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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 must reasonably 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 submitted information pertains to a pending felony theft case for which the suspect has been indicted and a pending sentencing trial in a murder case. You further state the district attorney’s office has not dismissed the theft indictment. Based upon these representations, we conclude release of the submitted information 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, the district attorney's office may withhold the submitted information under section 552.108(a)(1) 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 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/akg

Ref: ID# 555792

Enc. Submitted documents

c: Requestor
(w/o enclosures)