



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2015

Mr. John Biggins
Assistant District Attorney
Denton County District Attorney's Office
127 North Woodrow Lane
Denton, Texas 76205

OR2015-05914

Dear Mr. Biggins:

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# 557715.

The Denton County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a former named employee, a specified internal affairs investigation, and information pertaining to disciplinary findings and actions imposed on any employee for sustained violations of nine specified policies. You state the sheriff's office has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. The sheriff's office need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, we note the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless

¹We 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 that those records contain substantially different types of information than that submitted to this office.

it is excepted by section 552.108 of the Government Code or “made confidential under [the Act] or other law[.]” *Id.* § 552.022(a)(1). The responsive information pertains to completed investigations. This information is subject to section 552.022(a)(1) and must be released unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. You seek to withhold the information subject to section 552.022(a)(1) under section 552.103 of the Government Code. However, section 552.103 is a discretionary exception and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the responsive information may not be withheld under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will consider your assertion of section 552.108.

Section 552.108 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

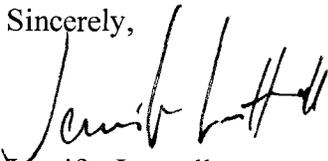
Gov’t Code § 552.108(a)(2), (b)(2). Subsections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply

to information requested). Section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. 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 City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency's personnel records); Open Records Decision No. 350 at 3-4 (1982). We note the information you seek to withhold under section 552.108 reflects it was generated as part of internal investigations conducted by sheriff's office that were purely administrative in nature. You do not provide any arguments explaining how the internal investigations resulted in criminal investigations or prosecutions. Therefore, you have failed to demonstrate the applicability of subsection 552.108(a)(2) or subsection 552.108(b)(2) to the responsive information, and the sheriff's office may not withhold this information on that basis. The sheriff's office must release the responsive 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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 557715

Enc. Submitted documents

c: Requestor
(w/o enclosures)