



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2015

Ms. Kleta Harris
Custodian of Records
Kaufman County Sheriff's Office
1900 East U.S. Highway 175
Kaufman, Texas 75142

OR2015-07028

Dear Ms. Harris:

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# 559721.

The Kaufman County Sheriff's Office (the "sheriff's office") received a request for 1) the 9-1-1 calls and radio traffic from 8:30am to 9:30am on January 31, 2013 and 2) the radio traffic from 10am to 12pm on March 30, 2013. The sheriff's office states it will release the 9-1-1 calls responsive to the first category of the request. The sheriff's office states no information responsive to the second category of the request exists.¹ The sheriff's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the sheriff's office claims and reviewed the submitted information.

¹The 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). Further, we need not address whether the sheriff's office may rely on Open Records Decision No. 2014-00134 (2014) as a previous determination for information responsive to the second category of the request.

Initially, the sheriff's office states the submitted information is "substantially the same information" as the information at issue in Open Records Letter No. 2013-03098 (2013) and seeks to rely on this ruling as a previous determination. In Open Records Letter No. 2013-03098, the sheriff's office represented that the information at issue related to a pending criminal investigation, and we concluded the sheriff's office may withhold the information at issue under section 552.108(a)(1) of the Government Code. In this instance, however, the sheriff's office now states the information at issue relates to a pending criminal prosecution. Thus, we find the circumstances have changed, and, the sheriff's office may not rely on Open Records letter No. 2013-03098 as a previous determination for the submitted information. *See* Open Records Decision No. 673 at 6-7 (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 the sheriff's office's arguments against disclosure of the information at issue.

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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why 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). The sheriff's office states the submitted radio traffic audio recordings relate to a pending criminal prosecution. Based upon these representations and our review, we determine that release of the radio traffic audio recordings 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). Accordingly, we find the sheriff's office may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

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/>

²As our ruling is dispositive, we need not address the sheriff's office's remaining argument against disclosure.

[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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 559721

Enc. Submitted documents

c: Requestor
(w/o enclosures)