



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 5, 2015

Ms. Diana Spiller  
Research Specialist/Public Information Coordinator  
Texas Commission on Jail Standards  
P.O. Box 12985  
Austin, Texas 78711

OR2015-16116

Dear Ms. Spiller:

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# 574259.

The Texas Commission on Jail Standards (the "commission") received a request for eleven categories of information pertaining to the Liberty County jail and the death of a named individual. You state you have released or will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. You also state you notified the Liberty County Sheriff's Office (the "sheriff's office") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the sheriff's office. We have considered the submitted arguments and reviewed the submitted information.

We note the submitted information includes a custodial death report. Article 49.18(b) of the Code of Criminal Procedure provides that, with the exception of any portion of the custodial death report the Office of the Attorney General ("OAG") determines is privileged, the OAG shall make the report public. *See Crim. Proc. Code art. 49.18(b)*. The format of the report was revised in May 2006 and now consists of four pages and an attached summary of how the death occurred. The OAG has determined the four-page report and summary must be released to the public but any other documents submitted with the revised report are confidential under article 49.18(b). Although you claim the submitted custodial death report is excepted from disclosure under section 552.108 of the Government Code, the exceptions to disclosure found in the Act generally do not apply to information that other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989)*. Therefore, the

commission must release the submitted custodial death report, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure.

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(a)(1) 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). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See Open Records Decision Nos. 474 (1987), 372 (1983)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You state, and provide documentation demonstrating, the sheriff’s office objects to disclosure of the information in Exhibits A and B because it relates to active criminal investigations. Based on this representation, we conclude the release of the information at issue 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, the commission may withhold the information in Exhibits A and B under section 552.108(a)(1) of the Government Code on behalf of the sheriff’s office.

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). Where a non-law enforcement agency has custody of information related to a concluded criminal case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information is related to a criminal case that has reached a conclusion other than a conviction or a deferred adjudication and a representation from a law enforcement entity that it wishes to have the information withheld. You state, and provide documentation demonstrating, the sheriff’s office objects to disclosure of the remaining information in Exhibit C because it relates to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based upon this representation, we conclude the commission may withhold the remaining information in Exhibit C under section 552.108(a)(2) of the Government Code on behalf of the sheriff’s office.

In summary, the commission must release the submitted custodial death report, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure. The commission may withhold the information in Exhibits A and B under section 552.108(a)(1) of the Government Code on behalf of the sheriff's office. The commission may withhold the remaining information in Exhibit C under section 552.108(a)(2) of the Government Code on behalf of the sheriff's office.

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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 574259

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Don Neyland  
C.I.D. Captain  
Criminal Investigation Division  
Liberty Count Sheriff's Office  
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Liberty, Texas 77575  
(w/o enclosures)