



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 28, 2015

Mr. Kenneth Hammack  
Sheriff  
Polk County Sheriff's Office  
1733 North Washington  
Livingston, Texas 77351

OR2015-18000

Dear Sheriff Hammack:

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# 577977.

The Polk County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in 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:

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<sup>1</sup>Although you also raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(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[.]

Gov't Code § 552.108(a)(1), (2). We note the protections offered by sections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) applies to information that pertains to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudications. 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). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code §§ 552.108(a)(2), .301(e)(1)(A).

You assert the submitted information should be withheld because it relates to a pending criminal prosecution. However, you also assert the submitted information is excepted from disclosure because it pertains to an investigation that did not result in conviction or deferred adjudication. Based on these conflicting representations, we are unable to determine if the submitted information relates to a pending criminal case or a closed case that did not result in conviction or deferred adjudication. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(1) or section 552.108(a)(2) to the submitted information; therefore, no portion of the submitted information may be withheld under section 552.108(a)(1) or section 552.108(a)(2) of the Government Code. As you claim no other exceptions to disclosure, the submitted information must be released to the requestor.<sup>2</sup>

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/>

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<sup>2</sup>Because the requestor has a special right of access to some of the information being released, the sheriff's office must again seek a decision from this office if it receives another request for the same information from another requestor.

[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,

A handwritten signature in cursive script that reads "Karen Hattaway".

Karen Hattaway  
Assistant Attorney General  
Open Records Division

KEH/sdk

Ref: ID# 577977

Enc. Submitted documents

c: Requestor  
(w/o enclosures)