



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 8, 2015

Ms. June B. Harden  
Assistant Attorney General  
Assistant Public Information Coordinator  
General Counsel Division  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2015-21089

Dear Ms. Harden:

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# 584398 (OAG PIR No. 15-42185).

The Office of the Attorney General (the "OAG") received a request for a specified incident report and autopsy report with toxicology results. You state the OAG does not possess some of the requested information.<sup>1</sup> 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 information.

Section 552.108(a)(2) 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: . . . (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)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. 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).

to a criminal investigation that 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). 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 at 4-5 (1987), 372 (1983). Where a non-law enforcement agency has custody of information relating to the concluded case of a law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration that the information relates to a criminal case that has reached a conclusion other than a conviction or deferred adjudication and a representation from the law enforcement agency that it wishes to have the information withheld.

You state the submitted information consists of an offense report of the Williamson County Sheriff's Office (the "sheriff's office") that is maintained by the Crime Victims' Compensation Division of the OAG as part of a specific claimant's compensation file. You explain the sheriff's office asks the OAG to withhold the submitted information from disclosure because the information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on these representations and our review, we conclude the OAG may withhold the submitted information pursuant to section 552.108(a)(2) 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](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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLK/cz

Ref: ID# 584398

Enc. Submitted documents

c: Requestor  
(w/o enclosures)