



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 10, 2016

Ms. Meredith L. Kennedy  
Assistant District Attorney  
Wichita County  
900 7th Street  
Wichita Falls, Texas 76301

OR2016-10674

Dear Ms. Kennedy:

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# 609378 (Wichita ORR 877).

The Wichita County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified report. You state the sheriff's office has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.1085, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the submitted information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2015-04677 (2015), 2015-09991 (2015), 2015-15766 (2015), and 2015-19475 (2015). In Open Records Letter No. 2015-04677, we concluded the sheriff's office may withhold the information at issue under section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2015-09991, we concluded, that, with the exception of the information subject to section 552.022(a)(17) of the Government Code and the basic information, which must be released, the sheriff's office may withhold the information at issue under

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<sup>1</sup>We 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.

section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2015-15766, we concluded that, with the exception of basic information, which must be released, the sheriff's office may withhold the information at issue under section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2015-19475, we concluded the sheriff's office may rely upon Open Records Letter No. 2015-09991 as a previous determination and withhold the identical information in accordance with that ruling and, to the extent the information at issue was not subject to the prior ruling, the sheriff's office may withhold the information at issue under section 552.108(a)(1) of the Government Code. There is no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office may continue to rely on Open Records Letter Nos. 2015-04677, 2015-09991, 2015-15766, and 2015-19475 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (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 information is or is not excepted from disclosure). To the extent the submitted information was not subject to the prior rulings, we will address your arguments against its disclosure.

Next, 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 sections 552.103 and 552.108 of the Government Code, the exceptions to disclosure found in the Act do not generally apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the sheriff's office 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). You state the remaining information relates to a pending criminal investigation. Based on your representation and our review, we find release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co.*

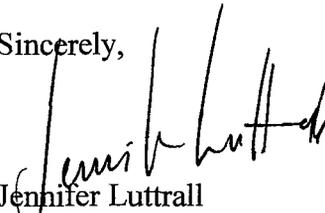
v. *City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state the sheriff's office has released, you may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

In summary, the sheriff's office may continue to rely on Open Records Letter Nos. 2015-04677, 2015-09991, 2015-15766, and 2015-19475 as previous determinations and withhold or release the identical information in accordance with those rulings. To the extent the submitted information was not subject to the prior rulings, then, the sheriff's office must release the submitted custodial death report, which we have marked, pursuant to article 49.18(b) of the Code of Criminal Procedure and with the exception of basic information, which you state the sheriff's office has released, the sheriff's office may withhold the remaining information under section 552.108(a)(1) 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/akg

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<sup>2</sup>As we are able to resolve this issue under section 552.108, we do not address your remaining claims against disclosure of the submitted information, except to note basic information may not be withheld from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

Ref: ID# 609378

Enc. Submitted documents

c: Requestor  
(w/o enclosures)