



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 21, 2016

Mr. John P. Beauchamp  
General Counsel  
Texas Commission on Law Enforcement  
6330 East Highway 290, Suite 200  
Austin, Texas 78723-1035

OR2016-14095

Dear Mr. Beauchamp:

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# 614977.

The Texas Commission on Law Enforcement (the "commission") received a request for several categories of information pertaining to communications between named individuals, as well as a specified investigation. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the raised arguments and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note the submitted information is a completed investigation subject to section 552.022 of the Government Code, which provides in pertinent part:

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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.

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 [of the Government Code[.]

*Id.* § 552.022(a)(1). This information must be released unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the commission may not withhold the submitted information under section 552.103. However, because you raise section 552.101 of the Government Code, which protects information made confidential under the law, as well as section 552.108 of the Government Code, we will address the applicability of these exceptions to the submitted information.

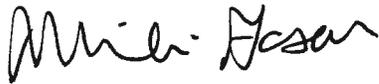
Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that 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). Section 552.108 is applicable only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 at 2 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. *See* Open Records Decision No. 199 (1978). However, an agency that employs peace officers to investigate crime and enforce criminal laws may claim section 552.108 excepts portions of its records from required disclosure. *See* Open Records Decision No. 127 at 8 (1976) (arson investigation unit of fire department is law enforcement agency). You explain the Enforcement Division of the commission is comprised of commissioned investigators who investigate criminal violations of law as they relate to the commission's mission. *See* Occ. Code § 1701.160 (commission may commission certified peace officers as investigators employed by commission for purpose of assisting commission in administering chapter 1701); *see also id.* §§ 1701.551-.553. You state the commission employs peace officers with full investigative, detention, and arrest authority. You further state the submitted information pertains to a criminal case that concluded in a result other

than conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to the submitted information and it may be withheld on this basis.<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/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,



Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 614977

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.