



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 21, 2013

Ms. Savannah Gonzalez  
Assistant District Attorney  
Hidalgo County  
100 North Closner, Room 303  
Edinburg, Texas 78539

OR2013-20365

Dear Ms. Gonzalez:

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# 506684 (2013-0042-DA).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for all information pertaining to the requestor's client, including information pertaining to (1) a six victim homicide; (2) a four victim homicide; (3) assistance provided by the requestor's client to any law enforcement or prosecuting agency, including information pertaining to a specified planned attack on a named individual; and (4) a specified gang. You state the sheriff's office has no information pertaining to categories three and four.<sup>1</sup> You also state the sheriff's office has released some information responsive to category one. You claim the submitted 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.<sup>2</sup>

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We assume that 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.

First, however, you inform us that Exhibit D contains offense reports that the sheriff's office inadvertently released in conjunction with information for which no privilege was asserted. You further inform us the requestor was immediately notified via telephone and e-mail of the error and the sheriff's office requested the return of these offense reports. You argue that this release does not act to waive the claim that this information is excepted from disclosure. Prior decisions from our office have concluded that involuntary disclosure of information on a limited basis through no official action and against the wishes and policy of the governmental body does not waive exceptions under the Act. *See* Open Records Decision Nos. 387 at 3 (1983), 376 at 2 (1983). *Cf.* Open Records Decision No. 676 at 10-11 (2002) (where document has been voluntarily disclosed to opposing party, attorney-client privilege has generally been waived). Based on the information you have provided, we agree that the sheriff's office has not waived its claim that this information is excepted from disclosure. We will therefore consider the exception you claim for the offense reports submitted in Exhibit D, as well for the information in Exhibit C.

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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit C and the offense reports in Exhibit D relate to two pending criminal cases. You explain both criminal cases have led to the conviction of various individuals; however, you further explain suspects remain at large in both cases and both criminal investigations remain ongoing. Based on these representations and our review, we conclude that release of this 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. 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).

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The sheriff's office must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. *See* 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 must be released, the sheriff's office may withhold Exhibit C and the offense reports in Exhibit D under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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<sup>3</sup>As our ruling is dispositive, we need not address your argument under section 552.108(b)(1).

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,

Handwritten signature of Tamara H. Holland in cursive script.

Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/ac

Ref: ID# 506684

Enc. Submitted documents

c: Requestor  
(w/o enclosures)