



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 11, 2017

Ms. Julia Gannaway  
Counsel for City of Commerce  
Lynn, Ross & Gannaway, LLP  
306 West Broadway Avenue  
Fort Worth, Texas 76104

OR2017-18302

Dear Ms. Gannaway:

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# 670690.

The City of Commerce (the "city"), which you represent, received six requests from five different requestors for information pertaining to the arrest of a named individual. You state you have released some information. You argue a portion of the submitted information does not consist of public information subject to the Act. In addition, you claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, you assert some of the submitted information is not subject to the Act because it relates to the judiciary. The Act applies to, in part, information that is "written, produced, collected, assembled, or maintained . . . in connection with the transaction of official business . . . by a governmental body[.]" Gov't Code § 552.002(a)(1). However, a "governmental body" under the Act "does not include the judiciary." *Id.* § 552.003(1)(B). Information that is "collected, assembled, or maintained by or for the judiciary" is not subject to the Act but is instead "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) ("function that a governmental entity performs determines whether the

entity falls within the judiciary exception to the . . . Act”). You contend some of the submitted information consists of records of the judiciary. However, the information at issue indicates it was written, produced, collected, or assembled by the city in connection with its official business and is maintained by the city for its own purposes. Consequently, we determine the city has failed to establish the information at issue was collected, assembled, or maintained by or for the judiciary. Accordingly, the information at issue is subject to the Act, and we will consider your argument against its disclosure.

Next, the city notes the submitted information includes police officers’ body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661 provides, in relevant part, the following:

(a) A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the last four requestors did not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested by the last four requestors pursuant to chapter 1701, with respect to these requestors, our ruling does not reach this information and it need not be released to the last four requestors.<sup>1</sup> Nevertheless, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b). As the first requestor did provide the requisite information under section 1701.661(a), we will address the city’s arguments for the submitted body worn camera recordings as to the first requestor.

Section 552.108(a)(1) of the Government Code exempts 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

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<sup>1</sup>As we are able to make this determination, we need not address the arguments against disclosure of this information with respect to the last four requestors.

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). In this instance, you assert the submitted information pertains to an ongoing criminal investigation and prosecution. Based on your representation, we conclude the release of the information at issue 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). Therefore, we agree that section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure basic information about a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d at 186–87. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Thus, with the exception of basic information, which you state you have released, the city may withhold the information at issue under section 552.108(a)(1) of the Government Code.

In summary, with respect to the last four requestors, pursuant to section 1701.661 of the Occupations Code, our ruling does not reach the body worn camera recordings at issue and they need not be released to the last four requestors. With the exception of the basic information, which the city states it has released, the city may withhold the information at issue 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,

A handwritten signature in black ink that reads "D. Michelle Case". The signature is written in a cursive, flowing style with a long horizontal flourish extending to the right.

D. Michelle Case  
Attorney  
Open Records Division

DMC/sdk

Ref: ID# 670690

Enc. Submitted documents

c: 5 Requestors  
(w/o enclosures)