



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2019

Mr. R. Blake Ewing
Assistant District Attorney
33rd & 424th Judicial Districts
1701 East Polk, Suite 24
Burnet, Texas 78611

OR2019-00206

Dear Mr. Ewing:

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# 744569.

The 33rd Judicial District, District Attorney's Office (the "district attorney's office") received a request for information pertaining to the investigation, indictment, arrest, and prosecution of a named individual in a specified cause number. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a police officers' body worn camera recording. 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(a) provides:

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 requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recording pursuant to chapter 1701, our ruling does not reach this information and it need not be released.¹ However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (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).

Section 552.108 of the Government Code provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov’t Code § 552.108(a)(1), (4). 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).

¹As we are able to make this determination, we need not address your remaining arguments against the disclosure of this information.

A governmental body claiming section 552.108(a)(1) must 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 information you indicated relates to an ongoing criminal investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon this 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). Thus, section 552.108(a)(1) is applicable to the information at issue. You contend the remaining information you indicated consists of “material prepared or reflects the mental impressions developed in anticipation of litigation or for trial by attorneys for the [s]tate,” or “communications made between and among [s]tate’s attorneys in anticipation of litigation or for trial.” Based on your representations and our review, we agree section 552.108(a)(4) is applicable the information you indicated.

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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the district attorney’s office may withhold the information you indicated under section 552.108(a)(1) of the Government Code and the information you indicated under section 552.108(a)(4) of the Government Code.

In summary, as the requestor did not properly request the body worn camera recording pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. With the exception of basic information, which must be released, the district attorney’s office may withhold the information you indicated under section 552.108(a)(1) of the Government Code and the information you indicated under section 552.108(a)(4) 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, 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 "Emily Kunst". The signature is written in a cursive style with a large, stylized "E" and "K".

Emily Kunst
Assistant Attorney General
Open Records Division

EK/mo

Ref: ID# 744569

Enc. Submitted documents

c: Requestor
(w/o enclosures)