



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2019

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
1400 South Lamar, 6 Floor 6W
Dallas, Texas 75215

OR2019-00439

Dear Ms. Armstrong:

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# 745326 (ORR Nos. D026424-101118 and D028837-110518).

The Dallas Police Department (the "department") received two requests for information pertaining to a specified incident. 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 representative sample of information.¹

Initially, we note the submitted information contains 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(a) provides the following:

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

¹We 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.

(3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). We note the requestors provided the requisite information under section 1701.661(a) for some of the body worn camera recordings at issue. As these body worn camera recordings were properly requested pursuant to chapter 1701 of the Occupations Code, we will address your argument against their disclosure. However, the requestors did not give the requisite information under section 1701.661(a) for the remaining body worn camera recordings at issue. As the requestors did not properly request the remaining body worn camera recordings pursuant to chapter 1701, our ruling does not reach this information, and it need not be released to the requestors.² 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).

Next, we note some of the remaining information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2018-26174 (2018). In that ruling, we concluded the department may withhold information you marked under section 552.108(a)(1) of the Government Code and must release the remaining information. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov’t Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, to the extent the department released any of the submitted information, it may not withhold the previously released information under section 552.108. However, to the extent the department did not release the submitted information, we will address the applicability of section 552.108.

Next, we must address the department’s obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov’t Code § 552.301(b). The department received the first request for information on October 11, 2018. We note this office does not count the date the

²As we are able to make this determination, we need not address your argument against disclosure of this information.

request was received for the purpose of calculating a governmental body's deadlines under the Act. You do not inform us the department was closed for business on any of the days at issue. Thus, the department's ten-business-day deadline for the first request was October 25, 2018. The department received the second request for information on November 5, 2018. Thus, the department's ten-business-day deadline for the second request was November 19, 2018. However, the envelope in which you submitted the information under section 552.301(b) for the first request bears a meter mark of October 26, 2018. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Further, the envelope in which you submitted the information under section 552.301(b) for the second request bears a meter mark of November 26, 2018. Consequently, we find the department failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Because you inform us, and provide documentation showing, the Dallas County District Attorney's Office (the "district attorney's office") objects to the release of the information at issue, we will consider whether the department may withhold the remaining information under section 552.108 of the Government Code on behalf of the district attorney's office.

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 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 submitted information is related to a pending investigation or prosecution. You further state, and provide documentation demonstrating, the district attorney's office objects to disclosure of the information at issue because such release will interfere with the detection, investigation, or prosecution of crime. Based on these representations, 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, we conclude section 552.108(a)(1) is applicable to the remaining information you marked.

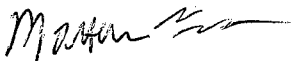
However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, a detailed description of the offense. See ORD 127 at 3-4. Thus, with the exception of the basic information, the department may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

In summary, as the requestors did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. To the extent the remaining information was not previously released in accordance with Open Records Letter No. 2018-26174, with the exception of the basic information, the department may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. The department must release the remaining information.

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/mo

Ref: ID# 745326

Enc. Submitted documents

c: 2 Requestor
(w/o enclosures)