



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 8, 2019

Ms. Michelle Buendia  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar, 6<sup>th</sup> Floor, 6W  
Dallas, Texas 75215

OR2019-00498

Dear Ms. Buendia:

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# 744974 (ORR# D026244).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident. The department states it will release some information. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception the department claims and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, the department states some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2018-12928 (2018). The department states the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the department may continue to rely on Open Records Letter No. 2018-12928 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not

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<sup>1</sup>Although you do not raise section 552.108 of the Government Code in your brief, we understand the department to assert this exception based on your markings and the substance of your arguments.

<sup>2</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 those records contain substantially different types of information than that submitted to this office.

changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note the submitted information includes a police officer's 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 at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. 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).

We must address the department's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, the department states, and submits documentation demonstrating, the department received the request for information on October 10, 2018. Accordingly, the department's ten-business-day deadline was October 24, 2018. However, the department submitted the request for a ruling in an envelope postmarked October 25, 2018. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

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 id.* § 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.3d 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 the department informs us, and provides 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 information at issue under section 552.108 of the Government Code on behalf of the district attorney’s office.

Next, we note the submitted information contains a press release. 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), 490 at 2 (1988). Accordingly, the department may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although the department seeks to withhold the previously released information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See* Gov’t Code § 552.007; Open Records Decision No. 177 at 3 (1977). Therefore, the department may not withhold the submitted press release, which we marked, under section 552.108 of the Government Code. As the department raises no further exceptions to disclosure for the press release, it must be released.

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). The department states, and submits documentation demonstrating, the district attorney’s office objects to the release of the remaining information you marked because it pertains to a pending criminal investigation. Based on these representations and our review, we conclude the 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. 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 remaining information you marked.

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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic

information). Accordingly, with the exception of basic information, which the department states has been released, the department may withhold the remaining information it marked under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

In summary, the department may continue to rely on Open Records Letter No. 2018-12928 as a previous determination and withhold or release the information at issue in accordance with that ruling. As the requestor 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. The department must release the press release we marked. With the exception of basic information, which the department states has been released, the department may withhold the remaining information it 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](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,



Kaelan A. Henze  
Assistant Attorney General  
Open Records Division

KAH/gw

Ref: ID# 744974

Enc. Submitted documents

c: Requestor  
(w/o enclosures)