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ATTORNEY GENERAL OF TEXAS

January 9, 2019

Mr. Lee I. Correa
Counsel for Van Zandt County
Flowers Davis, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, Texas 75701

OR2019-00590

Dear Mr. Correa:

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# 744965 (VZCSO PIA Request ID No. 66073524).

The Van Zandt County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information pertaining to two specified incidents at the Van Zandt County Courthouse (the "courthouse"). You state the sheriff's office has no information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We note we asked the sheriff's office to provide additional information pursuant to section 552.303 of the Government Code. *See Gov't Code* § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the information submitted by the sheriff's office pursuant to that request.

We must address the sheriff's office's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The sheriff's office received the request for information on October 16, 2018. You do not inform us the sheriff's office was closed for any business days between October 16, 2018, and November 6, 2018. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the sheriff's office was required to provide the information required by section 552.301(e) by November 6, 2018. You submitted most of the information required by section 552.301(e) prior to the November 6, 2018, deadline. However, you provided copies of the requested information in two separate envelopes postmarked November 16, 2018, and November 26, 2018. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the sheriff's office failed to comply with the procedural requirements mandated by 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 id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). You claim sections 552.101, 552.103, and 552.108 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your arguments under this section for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exceptions.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses section 1701.660 of the Occupations Code, which provides, in relevant part:

- (a) Except as provided by Subsection (b), a recording created with a body worn camera and documenting an incident that involves the use of deadly

force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer may not be deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded.

Occ. Code § 1701.660(a). You state the submitted body worn camera recording relates to an ongoing criminal investigation of law enforcement officers by the Texas Rangers. *See id.* § 1701.660(a). Further, we understand you do not seek to exercise the sheriff's office's discretion to release the body worn camera recording at issue pursuant to section 1701.660(b) of the Occupations Code. *See id.* § 1701.660(b) (law enforcement agency may release to the public a recording described by Subsection (a) if the law enforcement agency determines that the release furthers a law enforcement purpose). Accordingly, the sheriff's office must withhold the submitted body worn camera recording under section 552.101 of the Government Code in conjunction with section 1701.660(a) of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act ("HSA"). Section 418.182(a) of the Government Code provides in relevant part, "information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential." Gov't Code § 418.182(a). The fact that information may be related to a governmental body's security system does not make the information per se confidential under section 418.182. *See Open Records Decision No. 649 at 3 (1996)* (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See Gov't Code § 552.301(e)(1)(A)* (governmental body must explain how claimed exception to disclosure applies).

You state the remaining information consists of surveillance camera video recordings of the courthouse. You state the surveillance cameras at issue are part of the courthouse's security system, and the surveillance camera footage identifies vulnerabilities in the surveillance system. Upon review, we find the remaining recordings relate to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras' capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the sheriff's office must withhold the remaining information

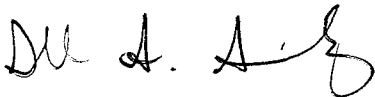
under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.³

In summary, the sheriff's office must withhold the submitted body worn camera recording under section 552.101 of the Government Code in conjunction with section 1701.660(a) of the Occupations Code. The sheriff's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.182(a) 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 744965

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.