



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 12, 2019

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2019-09902

Dear Ms. Lary:

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# 758936.

The Fort Bend County Fire Marshal (the "fire marshal's office") received two requests from different requestors for information related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information consists of a grand jury subpoena and information obtained pursuant to a grand jury subpoena. The Act applies only to information that is "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body[.]" Gov't Code § 552.002(a)(1). The judiciary is expressly excluded from the requirements of the Act. *Id.* § 552.003(1)(B). This office has determined, for purposes of the Act, a grand jury is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by a governmental body that is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and are also not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411, 398 (1983). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean such information is in the grand jury's constructive possession when the same information also is held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure,

but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. Thus, to the extent the records at issue are in the custody of the fire marshal's office solely as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. However, to the extent this information is not in the custody of the fire marshal's office solely as an agent for the grand jury, we will address the fire marshal's office's arguments against its disclosure.

Next, we note the submitted information includes the body worn camera recordings of fire marshals. 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 second requestor does not provide the requisite information under section 1701.661(a). As the second requestor did not properly request the body worn camera recordings pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information as to the second requestor and it need not be released to him. However, 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). Nevertheless, because the first requestor did provide the requisite information under section 1701.661(a), we will address the fire marshal's office's arguments for the submitted body worn camera recordings as to that requestor.

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. This section encompasses chapter 352 of the Local Government Code. Subchapter B of chapter 352 pertains to the powers and duties of county fire marshals. The subchapter provides the marshal shall investigate the cause, origin, and circumstances of fires that destroy property within the marshal's jurisdiction. Local Gov't Code § 352.013. In certain cases, such as where arson is suspected, the marshal may determine that further investigation is necessary and, in such cases, is granted subpoena powers and the authority to administer oaths and gather and preserve evidence. *Id.* § 352.015.

You assert the submitted information is protected from disclosure under section 352.017 of the Local Government Code. Section 352.017, in relevant part, provides:

(a) In a proceeding under this subchapter, the county fire marshal may:

- (1) conduct an investigation or examination in private;
- (2) exclude a person who is not under examination; and
- (3) separate witnesses from each other until each witness is examined.

Id. § 352.017(a). You argue, relying on *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977), the submitted information is protected from disclosure under subchapter B of chapter 352. In *Pruitt*, the Texas Supreme Court interpreted the statutory predecessor to subchapter B of Chapter 352 of the Local Government Code. The court concluded the purpose of the statute was to preclude interference with the fire marshal's law enforcement duties with respect to active investigatory records of the county fire marshal. *Id.* at 710. You state the arson investigation of the fire marshal's office is ongoing and release of the submitted information would interfere with the investigation. Accordingly, based upon your arguments and our review, we conclude the fire marshal's office may withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with the holding in *Pruitt* interpreting section 352.017(a) of the Local Government Code.¹

In summary, to the extent the grand jury subpoena and information obtained pursuant to the grand jury subpoena are in the custody of the fire marshal's office solely as an agent for the grand jury, these records are in the grand jury's constructive possession and are not subject to the Act. As the second requestor did not properly request the body worn camera recordings pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information as to the second requestor and it need not be released to him. The fire marshal's office may withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with the holding in *Pruitt* interpreting section 352.017(a) of the Local Government Code.

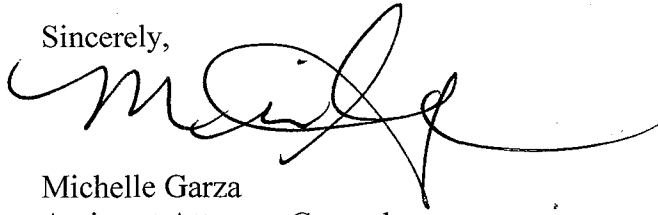
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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, appearing to read "Michelle Garza", with a long horizontal flourish extending to the right.

Michelle Garza
Assistant Attorney General
Open Records Division

MG/mo

Ref: ID# 758936

Enc. Submitted documents

c: 2 Requestor
(w/o enclosures)