



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 16, 2019

Mr. John K. McKinney, Jr.
Assistant County Attorney
Montgomery County
501 North Thompson, Suite 300
Conroe, Texas 77301

OR2019-10133

Dear Mr. McKinney:

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# 759680 (PIA 19PIA044).

The Montgomery County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for information pertaining to a specified case. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

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 information made confidential by other statutes. The sheriff's office asserts some of the submitted information is confidential under section 1701.661 of the Occupations Code. *See* Occ. Code § 1701.661. However, section 1701.661 applies to a police officer's body worn camera recording. *See id.* § 1701.651(1)(B) ("Body worn camera" means a recording device that is . . . worn on the person of a peace officer[.]") We find the submitted information does not contain body worn camera recordings for purposes of section 1701.661. Accordingly, we conclude the submitted information is not subject to section 1701.661 of the Occupations Code, and the sheriff's office may not withhold any portion of it under section 552.101 of the Government Code on that basis.

Section 552.108(b)(2) of the Government Code excepts from disclosure an internal record or notation of a law enforcement agency or prosecutor if “the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(b)(2). A governmental body claiming section 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(b)(2), .301(e)(1)(A). The sheriff’s office states the submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(b)(2) is applicable to this information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the sheriff’s office may withhold the submitted information under section 552.108(b)(2) of the Government Code.¹

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,



Paige Lay
Assistant Attorney General
Open Records Division

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

Ref: ID# 759680

Enc. Submitted documents

c: Requestor
(w/o enclosures)