



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2019

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

OR2019-14128

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# 767707.

The Fort Bend County Fire Marshal (the "fire marshal's office") received a request 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 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 requestor does not provide the requisite information under section 1701.661(a). As the 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 and it need not be released.¹ 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).

Section 552.022(a)(17) of the Government Code provides for the required public disclosure of “information that is also contained in a public court record[.]” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(17). The submitted information contains court-filed records subject to section 552.022(a)(17). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the fire marshal’s office may not withhold the information subject to section 552.022(a)(17) under section 552.108. However, as section 552.101 of the Government Code makes information confidential under the Act, we will consider your arguments under section 552.101 of the Government Code for this information. We will also consider your arguments for the information not subject to section 552.022(a)(17).

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

¹As we are able to make this determination, we need not address your remaining arguments against disclosure for this information.

(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 conducted by the fire marshal's office is ongoing and release of the information at issue would interfere with the investigation. Accordingly, based upon your arguments and our review, we conclude the fire marshal's office may withhold the 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.²

In summary, as the 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 and it need not be released. The fire marshal's office may withhold the remaining information 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Michelle Garza
Assistant Attorney General
Open Records Division

MG/mo

²As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

Ref: ID# 767707

Enc. Submitted documents

c: Requestor
(w/o enclosures)