



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 16, 2019

Ms. Myrna S. Reingold  
Legal Department  
Galveston County  
722 Moody Avenue, 5th Floor  
Galveston, Texas 77550

OR2019-19296

Dear Ms. Reingold:

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# 775805.

The Galveston County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information pertaining to a specified incident. The sheriff's office states it has released some information to the requestors. The sheriff's office claims the submitted body worn camera recordings were not properly requested pursuant to section 1701.661 of the Occupations Code. Additionally, the sheriff's office claims some of the submitted information is not subject to the Act. Further, the sheriff's office claims the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.119, 552.130, 552.137, 552.147, and 552.152 of the Government Code. We have considered the sheriff's office's submitted arguments and reviewed the submitted information.

As previously noted, the submitted information includes law enforcement officers' body worn camera recordings. 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 requestors do not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701, our ruling does not reach this information and it need not be released.<sup>1</sup> 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 requestors from making a future request for the same recorded information.” *Id.* § 1701.661(b).

The sheriff’s office states, and we agree, some of the remaining information consists of grand jury subpoenas and information obtained pursuant to the grand jury subpoenas. The judiciary is expressly excluded from the requirements of the Act. Gov’t Code § 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 sheriff’s office holds this information solely as an agent of the grand jury, such information is in the grand jury’s constructive possession and is not subject to disclosure under the Act.<sup>2</sup> To the extent the sheriff’s office holds the information at issue in its own capacity and not solely as an agent of the grand jury, we will address the sheriff’s office’s arguments against its disclosure.

Next, the sheriff’s office states, and we agree, most of the remaining information was the subject of previous requests for information, as a result of which this office issued Open

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<sup>1</sup>As we are able to make this determination, we need not address the sheriff’s office’s remaining arguments against disclosure of this information.

<sup>2</sup>In this instance, as our ruling is dispositive, we need not address the sheriff’s office’s remaining arguments against disclosure of this information.

Records Letter Nos. 2018-19751 (2018), 2018-20660 (2018), and 2018-27859 (2018). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office may rely on Open Records Letter Nos. 2018-19751, 2018-20660, and 2018-27859 as previous determinations and withhold or release the identical information in accordance with those rulings.<sup>3</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the instant request is not identical to the information ruled upon by this office in Open Records Letter Nos. 2018-19751, 2018-20660, and 2018-27859, we will address the sheriff's office's arguments against disclosure.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). Generally, 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 sheriff's office states, and provides documentation demonstrating, the information at issue is related to a pending criminal prosecution by the Galveston County Criminal District Attorney's Office (the “district attorney's office”). The sheriff's office informs us the district attorney's office objects to disclosure of the information at issue because its release would interfere with the prosecution. Based on these representations and our review, we conclude the release of the information at issue 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). Accordingly, we find the sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.<sup>4</sup>

In summary, pursuant to section 1701.661 of the Occupations Code, our ruling does not reach the body worn camera recordings at issue and they need not be released. To the extent the sheriff's office holds the submitted grand jury subpoenas and information obtained pursuant to the grand jury subpoenas solely as an agent of the grand jury, such information

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<sup>3</sup>As we are able to make this determination, we need not address the sheriff's office's remaining arguments against disclosure of this information.

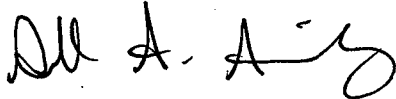
<sup>4</sup>As our ruling is dispositive, we do not address the sheriff's office's remaining arguments to withhold the remaining information, except to note basic information may not be withheld from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 at 2-3 (1991).

is in the grand jury's constructive possession and is not subject to disclosure under the Act. To the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the sheriff's office may rely on Open Records Letter Nos. 2018-19751, 2018-20660, and 2018-27859 as a previous determinations and withhold or release the identical information in accordance with those rulings. The sheriff's office may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

Finally, the sheriff's office asks this office to issue a previous determination that would permit it to withhold certain information without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/eb

Ref: ID# 775805

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)