



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2019

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

OR2019-20378

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# 777200.

The Fort Bend County Fire Marshal (the "fire marshal's office") received a request for information pertaining 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 a peace officer's 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(a) provides:

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 give the information required by section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, 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 Subsection (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).

Next, we note some of the remaining information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2018-31560 (2018), this office ruled the fire marshal’s office may withhold the requested information under section 552.101 of the Government Code in conjunction 352.017(a) of the Local Government Code and the holding in *Ex Parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the remaining information is identical to the information previously requested and ruled upon, the fire marshal’s office may continue to rely on Open Records Letter No. 2018-31560 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. *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 a 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 remaining information is not encompassed by the prior ruling, we will consider the exception you raise.

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:

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

(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*, that 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 that 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 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 at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. To the extent the remaining information is identical to the information ruled upon on in Open Records Letter No. 2018-31560, the fire marshal's office may continue to rely on this ruling as a previous determination and withhold the previously ruled upon information in accordance with that ruling. To the extent the remaining information is not identical to the information previously ruled upon on in Open Records Letter No. 2018-31560, the fire marshal's office may withhold the remaining information under section 552.101 of the Government Code in conjunction with the holding in *Ex Parte Pruitt* interpreting section 352.017(a) of the Local Government Code.

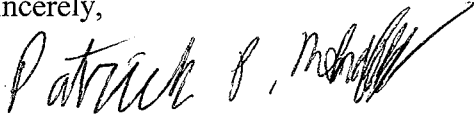
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

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

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 "Patrick P. Mehaffy", with a stylized flourish at the end.

Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/jxd

Ref: ID# 777200

Enc. Submitted documents

c: Requestor
(w/o enclosures)