



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 5, 2019

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

OR2019-21493

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# 779788.

The Galveston County Criminal District Attorney's Office (the "district attorney's office") received a request for "all the documents and information provided to the defense in discovery in [a specified case]." The district attorney's office states it has released some information to the requestor. The district attorney's office claims the requestor did not properly request the submitted body worn camera recordings pursuant to section 1701.661 of the Occupations Code. Additionally, the district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.119, 552.130, 552.136, 552.147, and 552.152 of the Government Code. We have considered the district attorney's office's submitted arguments and reviewed the submitted representative sample of information.¹

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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 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.² 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).

Next, the county states, and we agree, some of the remaining information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2018-24364 (2018) and 2018-27859 (2018). We have no indication there has been any change in the law, facts, or circumstances on which these 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 district attorney’s office may rely on Open Records Letter Nos. 2018-24364 and 2018-27859 as previous determinations and withhold or release the identical information in accordance with those rulings.³ *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. 2018-24364 and 2018-27859, we will address the district attorney’s office’s arguments against disclosure.

²As we are able to make this determination, we need not address the district attorney’s office’s remaining arguments against disclosure of this information.

³As we are able to make this determination, we need not address the district attorney’s office’s remaining arguments against disclosure of this information.

Additionally, the district attorney's office states some of the requested information was the subject of Open Records Letter Nos. 2018-19751 (2018) and 2018-20660 (2018). Although the district attorney's office seeks to rely on these prior rulings for some of the information at issue in this request, we note the previous requests for information were sent to the Galveston County Sheriff's Office (the "sheriff's office"), which is a different governmental body than the district attorney's office. Therefore, the district attorney's office may not rely on our rulings to the sheriff's office as previous determinations for any of the information at issue. *See* ORD 673.

Section 552.108(a)(1) 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[.]" Gov't Code § 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 district attorney's office states the remaining information relates to a pending criminal prosecution. Based upon the district attorney's office's representation and our review, we conclude release of the information at issue will 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 district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

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 submitted information is identical to the information previously requested and ruled upon by this office, we conclude the district attorney's office may rely on Open Records Letter Nos. 2018-24364 and 2018-27859 as previous determinations and withhold or release the identical information in accordance with those rulings. The district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

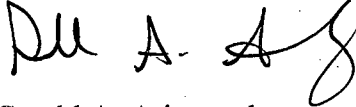
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open

⁴As our ruling is dispositive, we do not address the district attorney'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).

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first name "Gerald" being the most prominent.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/eb

Ref: ID# 779788

Enc. Submitted documents

c: Requestor
(w/o enclosures)