



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 11, 2019

Ms. Elizabeth Stevens
Assistant General Counsel
Harris County District Attorney's Office
500 Jefferson Street, Suite 600
Houston, Texas 77002-1901

OR2019-25515

Dear Ms. Stevens:

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# 784840.

The Harris County District Attorney's Office (the "district attorney's office") received two requests from the same requestor for all information related to a specified incident involving a named individual. You claim the submitted information is subject to a previous ruling from this office. You further claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered your arguments and reviewed the submitted representative sample of information.²

Initially, you state the information at issue was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-09940 (2019). In that ruling, we determined the submitted body worn camera video recording was not properly requested pursuant to chapter 1701 of the Occupations Code and need not be

¹Although you do not cite to section 552.147 of the Government Code in your brief, we understand you to raise this section based on your arguments.

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

released, and, with the exception of basic information, which must be released, the district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code. We note the body worn camera video recording at issue is now properly requested under section 1701.661(a) of the Occupations Code. Thus, we find the circumstances have changed in regard to this information, and the district attorney's office may not rely on Open Records Letter No. 2019-09940 as a previous determination in this instance. *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, we have no indication the law, facts, or circumstances on which the previous ruling was based have changed with respect to the remaining information at issue in Open Records Letter No. 2019-09940. Therefore, we conclude the district attorney's office may rely on Open Records Letter No. 2019-09940 as a previous determination and withhold or release the remaining identical information in accordance with that ruling.³ We will address your remaining arguments against disclosure of the body worn camera video recording at issue, as well as any information not at issue in Open Records Letter No. 2019-09940.

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). You state the remaining information pertains to a pending criminal investigation. Based on your representation, 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). Thus, section 552.108(a)(1) of the Government Code is applicable to the remaining information and the district attorney's office may withhold it on this basis.⁴

In summary, with the exception of the body worn camera video recordings at issue, the district attorney's office may rely on Open Records Letter No. 2019-09940 as a previous determination and withhold or the identical information in accordance with that ruling. The district attorney's office may withhold the remaining information under section 552.108(a)(1) of the Government Code.

³As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/be

Ref: ID# 784840

Enc. Submitted documents

c: Requestor
(w/o enclosures)