



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 25, 2019

Ms. Alicia K. Kreh
Counsel for the City of Mansfield
Taylor, Olson, Adkins, Sralla, & Elam
6000 Western Place Suite 200
Fort Worth, Texas 76107-4654

OR2019-30222

Dear Ms. Kreh:

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# 793252.

The City of Mansfield (the "city"), which you represent, received a request for the administrative and criminal investigations into the death of six named inmates at the Mansfield City Jail. You assert part of the submitted information was not properly requested pursuant to section 1701.661(a) of the Occupations Code. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.152 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information includes peace 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(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 requisite information under 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 the city need not release it.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 you only submitted the criminal investigations for the specified incidents. To the extent information responsive to the remainder of the request existed on the date the city received the request, we assume the city already released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If the city has yet to release any such information, it must do so at this time. *See* Gov’t Code §§ 552.301(a), .302.

We also note some of the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2016-11641 (2016) and 2016-16734 (2016). In those rulings, we determined: the submitted body worn camera recording was not properly requested pursuant to chapter 1701 of the Occupations Code and it need not be released; the city must release the search warrant pursuant to section 552.022(a)(17) of the Government Code, as well as the Statutory Warning and Notice of Suspension, and the basic information; and, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. We note section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See id.* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. You seek to withhold information previously ordered released under section 552.108(a)(2) of the Government Code. Section 552.108 does not prohibit the release of information or make information confidential. *See* Open Records Decision No. 586 (1991) (governmental body may waive

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

statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the city may not now withhold such information under section 552.108. Accordingly, the city must release the previously released documents we marked pursuant to section 552.007 of the Government Code. However, we find the facts and circumstances on which the prior rulings were based have changed in regard to the remaining information at issue in those rulings. Accordingly, the city may not rely on those rulings as previous determinations. *See* Open Records Decision No. 673 (2001). Therefore, we will address your arguments under section 552.108 for the remaining information at issue.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the remaining information at issue pertains to criminal investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) applies to the remaining information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which the city must release, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.¹

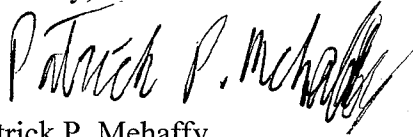
In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information, and the city need not release it. The city must release the previously released documents we marked pursuant to section 552.007 of the Government Code. With the exception of basic information, which the city must release, the city may withhold the remaining information under section 552.108(a)(2) 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.

¹ As our ruling is dispositive, we need not address your remaining argument against the disclosure of this information.

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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/rm

Ref: ID# 793252

Enc. Submitted documents

c: Requestor
(w/o enclosures)