



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 10, 2019

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78207

OR2019-34686

Dear Mr. Kopp:

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# 800505 (Reference No. W283441).

The San Antonio Police Department (the "department") received a request for a specified investigation file. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the submitted information includes a police officer's body worn camera recording. 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;

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<sup>1</sup> We 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.

- (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 recording at issue was not properly requested pursuant to chapter 1701, our ruling does not reach this information and it need not be released.<sup>2</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 requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

Next, we note the remaining information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of “information that is also contained in a public court record[.]” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). The department seeks to withhold the information at issue under section 552.108 of the Government Code. However, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the court-filed documents, which we marked, under section 552.108. However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to the court-filed documents subject to section 552.022(a)(17).<sup>3</sup> Further, we will address the department’s arguments against disclosure of the remaining information not subject to section 552.022(a)(17).

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 an open criminal investigation. Based on your 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),

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<sup>2</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

*writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we conclude section 552.108(a)(1) is applicable to the remaining information.

However, we note 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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information and the information subject to section 552.022(a)(17) of the Government Code, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

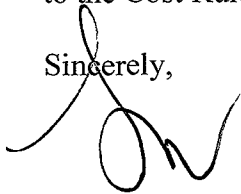
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record we marked under section 552.130 of the Government Code.

In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. With the exception of the basic information and the information subject to section 552.022(a)(17) of the Government Code, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the court-filed documents, the department must withhold the motor vehicle record information we marked under section 552.130 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 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,



Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/rm

Mr. James Kopp - Page 4

Ref: ID# 800505

Enc. Submitted documents

c: Requestor  
(w/o enclosures)