



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2020

Ms. Mary E. Miller
Assistant District Attorney
Denton County
127 North Woodrow Lane, Suite 300
Denton, Texas 76205

OR2020-00984

Dear Ms. Miller:

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# 805582.

The Denton County Sheriff's Office (the "sheriff's office") received a request for information pertaining to incident numbers 19-2812 and 19-4051. You state the sheriff's office has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, 552.119, 552.130, 552.136, and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information, portions of which consist of representative samples.²

Initially, we note the submitted information includes peace officers' body worn camera recordings pertaining to the two incidents specified in the present request. 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:

¹ Although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise for information not held in an employment context.

² 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.

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) for some of the submitted body worn camera recordings. As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach these recordings and the sheriff's office need not release them.³ 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). We note the present request includes the information required by section 1701.661(a) with respect to some of the body worn camera recordings pertaining to incident number 19-4051. *Id.* § 1701.661(a). Thus, because the requestor properly requested these body worn camera recordings, we will consider your arguments against disclosure of this information.

Next, you state the remaining information pertaining to incident number 19-4051 was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2019-34589 (2019) and 2019-35837 (2019). In Open Records Letter No. 2019-34589 we determined, in part, the submitted body camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code and need not be released. As noted above, some of the body worn camera recordings pertaining to incident number 19-4051 are now properly requested pursuant to section 1701.661(a) of the Occupations Code. Thus, with respect to the properly requested body worn camera recordings at issue, we find the circumstances have changed and the sheriff's office may not rely on Open Records Letter No. 2019-34589 as a previous determination with respect to this information. *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 rulings were based have changed with respect to the remaining information at issue in Open Records Letter

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

Nos. 2019-34589 and 2019-35837. Accordingly, with the exception of the properly requested body worn camera recordings, we conclude the sheriff's office may rely on Open Records Letter Nos. 2019-34589 and 2019-35837 as previous determinations and withhold or release the remainder of the information pertaining to incident number 19-4051 in accordance with those rulings.⁴

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 . . . 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 pertaining to incident number 19-4051 relates to an ongoing criminal investigation being conducted by the Denton Police Department (the “department”). Further, you provide documentation demonstrating the department objects to release of the information at issue. Based on these 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the sheriff's office may withhold the remaining information pertaining to incident number 19-4051 under section 552.108(a)(1) of the Government Code.⁵

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 pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

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 information held to be public in *Houston Chronicle*. *See* 531 S.W.2d 177 at 186-188; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not

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

⁵ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

include dates of birth or motor vehicle record information subject to section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly, with the exception of the basic information, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code.⁶

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You inform us the basic information identifies undercover police officers. You assert release of their identities would jeopardize their safety and subject the officers to a substantial threat of physical harm. Thus, we find section 552.152 is applicable to the identity of the undercover officers within the information at issue. Accordingly, the sheriff's office must withhold the identifying information of the undercover officers you marked under section 552.152 of the Government Code.

In summary, as some of the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach those recordings and the sheriff's office need not release them. With the exception of the properly requested body worn camera recordings, the sheriff's office may rely on Open Records Letter Nos. 2019-34589 and 2019-35837 as previous determinations and withhold or release the remainder of the information pertaining to incident number 19-4051 in accordance with those rulings. The sheriff's office may withhold the remaining information pertaining to incident number 19-4051 under section 552.108(a)(1) of the Government Code. With the exception of the basic information, which must generally be released, the sheriff's office may withhold the remaining information under section 552.108(a)(2) of the Government Code. In releasing the basic information, the sheriff's office must withhold the identifying information of the undercover officers you marked under section 552.152 of the Government Code.

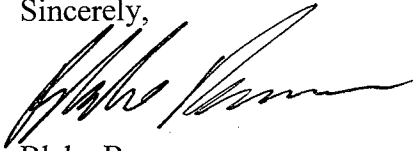
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁶ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 "Blake Brennan", written in a cursive style.

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/be

Ref: ID# 805582

Enc. Submitted documents

c: Requestor
(w/o enclosures)