



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 14, 2020

Ms. Jordan M. Powell
Assistant General Counsel
Hays County
111 East San Antonio Street, Suite 202
San Marcos, Texas 78666

OR2020-01259

Dear Ms. Powell:

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# 806040.

Hays County (the "county") received two requests from the same requestor for information pertaining to a specified incident. The county claims the requestor did not properly request some of the submitted information pursuant to section 1701.661 of the Occupations Code. Additionally, the county claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the county claims and reviewed the submitted information.

The submitted information includes a law enforcement 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;
- (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). The county claims, and we agree, the requestor did not properly request the body worn camera recording at issue in one of his requests. However, we note, and the county acknowledges, the requestor provided the requisite information under section 1701.661(a) of the Occupations Code for the body worn camera recording in his second request. Accordingly, since the requestor properly requested the body worn camera recording at issue, we will consider the county's argument against disclosure of this information.

The county states some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-34929 (2019). In that ruling, we determined the county may withhold the submitted information under section 552.108(a)(2) of the Government Code on behalf of the Hays County Criminal District Attorney's Office (the "district attorney's office"). We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the county may rely on Open Records Letter No. 2019-34929 as a previous determination and withhold the identical information in accordance with that ruling. *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).

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). Where a governmental body has custody of information relating to a case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the case and a representation from the law enforcement agency that it wishes to have the information withheld. The county states, and provides an affidavit from the district attorney's office stating, the remaining information pertains to a 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 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). Basic information refers to the 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). Thus, with the exception of the basic information, the county may withhold the remaining information

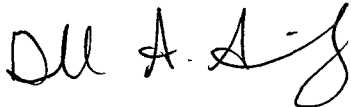
under section 552.108(a)(2) of the Government Code on behalf of the district attorney's office.¹

In summary, the county may rely on Open Records Letter No. 2019-34929 as a previous determination and withhold the identical information in accordance with that ruling. With the exception of the basic information, which must be released, the county may withhold the remaining information under section 552.108(a)(2) of the Government Code on behalf of the district attorney's office.

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,



Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/be

Ref: ID# 806040

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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