



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 4, 2020

Mr. Robert Schell  
Assistant Ellis County & District Attorney  
Ellis County  
109 South Jackson  
Waxahachie, Texas 785165

OR2020-03248

Dear Mr. Schell:

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# 810880.

The Ellis County Sheriff's Office (the "sheriff's office") received fifty-five requests from the same requestor. You state the sheriff's office does not possess some of the requested information.<sup>1</sup> You claim a portion of the submitted information is not subject to the Act pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.1175, 552.130, and 552.137 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note the submitted information includes deputies' 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:

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<sup>1</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup> Although you do not raise section 552.1175 of the Government Code in your brief, we understand you to raise this exception based on your arguments in the documents.

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 it need not be released. 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, you state the sheriff’s office sought clarification from the requestor for a portion of the request for information. *See* Gov’t Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You state the sheriff’s office has not received a response from the requestor for this portion of the request. Thus, for the portion of the request for which you have sought but not received clarification, we find the sheriff’s office is not required to release information in response to this portion of the request. However, if the requestor clarifies this portion of the request for information, the sheriff’s office must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov’t Code 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990).

You also state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-30470 (2019). In that ruling, we determined that: (1) with the exception of certain information, the sheriff’s office may withhold the information at issue under section 552.103(a) of the Government Code; (2) to the extent the information pertains to an individual to whom section 552.1175(a) of the Government Code applies and the individual elects to restrict access to the information in accordance with section 552.1175(b), then the sheriff’s office must withhold certain information under section 552.1175 of the Government Code; and (3) the sheriff’s office must release the remaining information. We note the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the sheriff’s office must continue to rely on Open Records Letter No. 2019-30470 as a previous

determination and withhold or release the information at issue in accordance with that ruling.<sup>3</sup> 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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). You seek to withhold this information under sections 552.103 and 552.108 of the Government Code, which are discretionary exceptions to disclosure and do not make information confidential under the Act. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the sheriff’s office may not withhold the marked court-filed documents under section 552.103 or section 552.108. However, because section 552.1175 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>4</sup> Further, we will address the sheriff’s office’s argument against disclosure of the information not subject to section 552.022(a)(17) of the Government Code.

Section 552.103 of the Government Code provides, in part, the following:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov’t Code § 552.103(a), (c). The sheriff’s office has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular

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

<sup>4</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the sheriff's office received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The sheriff's office must meet both prongs of this test for information to be excepted under section 552.103(a). In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect that litigation is “realistically contemplated.” See Open Records Decision No. 518 at 5 (1989); see also Attorney General Opinion MW-575 (1982) (finding that investigatory file may be withheld from disclosure if governmental body attorney determines that it should be withheld pursuant to section 552.103 and that litigation is “reasonably likely to result”). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. See ORD 452 at 4.

You state the information not subject to section 552.022(a)(17) of the Government Code was investigated by the sheriff's office and relates to a criminal case pending with the Ellis County & District Attorney's Office (the “district attorney's office”). We note the sheriff's office is not a party to the pending case and, thus, does not have a litigation interest in the case for purposes of section 552.103. See Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (statutory predecessor to section 552.103 only applies when governmental body is party to litigation). Under these circumstances, we require an affirmative representation from the governmental body with the litigation interest that it wants the information at issue withheld from disclosure under section 552.103. You request the information at issue be withheld because a criminal case is pending in Ellis County Criminal Court No. 1. Thus, we understand you to assert, as the assistant district attorney for the district attorney's office, the release of the information at issue would interfere with the district attorney's office's prosecution of the pending case. Based on your representations, we conclude the sheriff's office may withhold the information at issue on behalf of the district attorney's office under section 552.103 of the Government Code.<sup>5</sup>

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Some of the remaining information relates to an officer subject to section 552.1175. We note the requestor has a right of access to his own personal information under section 552.023 of the Government Code, and this information may not be withheld from him under section 552.1175. See *id.* § 552.023(a) (person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect person's privacy interests); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). The sheriff's office informs us, and provides

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

documentation showing, the remaining officer at issue has elected to restrict access to the information in accordance with section 552.1175(b). Accordingly, the sheriff's office must withhold the information it marked under section 552.1175 of the Government Code.

In summary, the submitted body worn camera recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code and need not be released to this requestor in response to this request for information. The sheriff's office must continue to rely on Open Records Letter No. 2019-30470 as a previous determination and withhold or release the information at issue in accordance with that ruling. With the exception of the information subject to section 552.022(a)(17) of the Government Code, which must be released, the sheriff's office may withhold the remaining information under section 552.103 of the Government Code. The sheriff's office must withhold the information it marked under section 552.1175 of the Government Code. The sheriff's office must release the remaining information.<sup>6</sup>

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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/mo

Ref: ID# 810880

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>6</sup> We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the sheriff's office receives another request for this information from a different requestor, the sheriff's office must again seek a ruling from this office.