



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2020

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

OR2020-19843

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# 839016 (SO03525 and SO03665).

The Denton County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information pertaining to a specified incident. You state the sheriff's office has released some information to the requestors. You state the sheriff's office does not have information pertaining to a portion of the request.¹ 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.² We have considered the exceptions you claim and reviewed the submitted information.

¹ We note the Act does not require a governmental body to disclose information that did not exist at the time the governmental body received the request for information. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

² 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.

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 first requestor does not provide the requisite information under section 1701.661(a) for the submitted body worn camera recordings. In addition, the second 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 any of the submitted body worn camera recordings to the first requestor or any of the body worn camera recordings at issue to the second requestor.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 second request includes the information required by section 1701.661(a) with respect to some of the body worn camera recordings. *Id.* § 1701.661(a). Thus, because the second requestor properly requested these body worn camera recordings, we will consider your arguments against disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining information relates to a concluded case that did not result in a conviction or deferred

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

adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to the remaining information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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 Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information includes, among other items, the names of the arresting and investigating officers. See ORD 127 at 3-4. Thus, with the exception of basic information, some of which you state the sheriff's office has released, the sheriff's office may withhold the remaining information pursuant to section 552.108(a)(2) of the Government Code.

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 some of 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 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 any of the submitted body worn camera recordings to the first requestor or any of the body worn camera recordings at issue to the second requestor. With the exception of basic information, some of which you state the sheriff's office has released, the sheriff's office may withhold the remaining information pursuant to 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. The remaining basic information must be released.

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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 839016

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)