



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2020

Mr. Ricardo Vela, Jr.
Assistant District Attorney
Dallas County District Attorney's Office
133 North Riverfront Boulevard, LB19
Dallas, Texas 75207-4399

OR2020-25521

Dear Mr. Vela:

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# 846005.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for exhibits presented in court in a specified case during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.1175, 552.130, 552.136, 552.137, 552.139, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information is not responsive to the present request because it does not consist of the requested trial exhibits presented during the specified time period. This ruling does not address the public availability of the non-responsive information, which we indicated, and the district attorney's office need not release it in response to this request.

Next, we note the responsive information includes a police officer's body worn camera recording. Body worn cameras are subject to chapter 1701 of the Occupations

¹ 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 that those records contain substantially different types of information than that submitted to this office.

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 requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released.² 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, we note the remaining responsive information was presented in court and may be subject to section 552.022 of the Government Code. 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). To the extent the remaining responsive information is part of a public court record, it is subject to section 552.022(a)(17) of the Government Code. In that event, although you raise sections 552.103 and 552.108 of the Government Code for this information, these sections are discretionary exceptions 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). Accordingly, if the remaining responsive information is part of a public court record, none of the remaining responsive information may be withheld under section 552.103 or section 552.108. In that instance, because section 552.130 of the Government Code can make information confidential under the Act, we will address the applicability of this section to remaining responsive information. Conversely, to the extent the remaining responsive information is not part of a public court record, we will address your arguments against disclosure of this information.

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

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). 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 responsive information relates to criminal case that resulted in a conviction but the appeal is pending. You contend release of the remaining responsive information would interfere with the detection, investigation, or prosecution of crime. Based on your representations and our review, we find 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’dn.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, if the remaining responsive information is not subject to section 552.022(a)(17) of the Government Code, the district attorney’s office may withhold the remaining responsive 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. We note the remaining responsive video recording contains motor vehicle record information subject to section 552.130. Thus, to the extent the remaining responsive information is subject to section 552.022(a)(17), the district attorney’s office must withhold the visible license plate in the remaining responsive video recording under section 552.130 of the Government Code.

In summary, as the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. To the extent the remaining responsive information is not subject to section 552.022(a)(17) of the Government Code, the district attorney’s office may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code. To the extent the remaining responsive information is subject to section 552.022(a)(17) of the Government Code, the district attorney’s office must withhold the visible license plate in the remaining video recording under section 552.130 of the Government Code and must release the remaining responsive information.

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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/gw

Ref: ID# 846005

Enc. Submitted documents

c: Requestor
(w/o enclosures)