



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 26, 2022

Ms. Amy L. Sims
Deputy City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2022-11936

Dear Ms. Sims:

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# 942973 (ORR# P000248-013022, P000249-013022, P000341-021422, P000351-021422, and P000353-021422).

The City of Lubbock (the "city") received five requests from three requestors for information pertaining to named individuals, including information pertaining to a specified incident at a specified address. You claim some information is subject to a previous ruling. You also claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

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

¹ Although the city also raises section 552.101 of the Government Code, the city has not provided any arguments to support this exception. Therefore, we assume the city has withdrawn its claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

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.

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). In this instance, the requestors do not provide the requisite information under section 1701.661(a). As the body worn camera recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released.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).

Next, you state a portion of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2021-07873 (2021). In that ruling, we determined, with the exception of basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the city may rely on Open Records Letter No. 2021-07873 as a previous determination and withhold or release 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)(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);

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

see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977). The city states a portion of the remaining information pertains to an active criminal investigation or prosecution. Based on this representation, 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). Thus, section 552.108(a)(1) is applicable to the information you indicated.

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. *See 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The city states the remaining information pertains to closed cases that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the remaining information.

However, we note 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*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, which must be released, the city may withhold the information you indicated under section 552.108(a)(1) of the Government Code and may withhold the remaining information under section 552.108(a)(2) of the Government Code.

In summary, the submitted body worn camera recording was not properly requested pursuant to chapter 1701 of the Occupations Code and it need not be released. The city may rely on Open Records Letter No. 2021-07873 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of the basic information, which must be released, the city may withhold the information you indicated under section 552.108(a)(1) of the Government Code and may withhold the remaining information under section 552.108(a)(2) 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 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,

Colin Henry
Attorney
Open Records Division

CEH/be

Ref: ID# 942973

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)