



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 4, 2022

Mr. Craig Jones
County Attorney
Hutchinson County
1400 Veta, Room 108
Borger, Texas 79007

OR2022-30571

Dear Mr. Jones:

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# 982085.

Hutchinson County (the "county") received two requests from different requestors for the body worn camera recordings pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from an interested party. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the requestors only seek body worn camera audio or video recordings. We note the submitted dashboard camera recordings do not contain any audio or video recorded by a body worn camera. Accordingly, only the submitted body worn camera recordings are responsive to the instant requests. This ruling does not address the public availability of any information that is not responsive to the requests and the county is not required to release such information in response to these requests.¹

Next, we note the responsive information consists of officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code, which provides the procedures a requestor must follow when seeking a body worn camera recording. Occ. Code § 1701.661(a). Upon review, we determine the requestors provided

¹ As we are able to make this determination, we need not address your argument against disclosure of this information.

the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recordings at issue. We note section 1701.662 of the Occupations Code provides, in relevant part:

(a) Notwithstanding Section 552.301(b), Government Code, a governmental body's request for a decision from the attorney general about whether a requested body worn camera recording falls within an exception to public disclosure is considered timely if made not later than the *20th business day* after the date of receipt of the written request.

Id. § 1701.662(a) (emphasis added). Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). However, for body worn camera recordings, section 1701.662(a) overrides the time deadline of section 552.301(b). The county received the requests for information on June 14, 2022. You inform us the county was closed on June 17, 2022, June 24, 2022, July 1, 2022, July 4, 2022, July 8, 2022, and July 15, 2022. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the county's 20-business-day deadline was July 20, 2022. However, you did not request a ruling from this office until July 28, 2022. *See id.* § 552.308(a)(1). Accordingly, we conclude the county failed to comply with the time requirements of section 1701.662(a) of the Occupations Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). Because you inform us, and provide documentation showing, the 84th Judicial District Attorney's Office of Hutchinson County (the "district attorney's office") objects to the release of the information at issue, we will consider whether the county may withhold the responsive information under section 552.108 of the Government Code on behalf of the district attorney's office.

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). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a

governmental body has custody of information relating to a pending case of another law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration the information relates to a pending criminal case and representation from the law enforcement agency that it wishes to have the information withheld. The district attorney's office objects to the release of the information at issue because it relates to a pending criminal investigation, and release of the information would interfere with the investigation and prosecution of the case. Based upon 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 responsive information. Thus, the county may withhold the responsive information under section 552.108(a)(1) 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/pt

Ref: ID# 982085

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Interested Party
(w/o enclosures)