



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 14, 2022

Deputy Lupe Bretado
Ector County Sheriff's Office
P.O. Box 2066
Odessa, Texas 79760

OR2022-35381

Dear Deputy Bretado:

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# 984969.

The Ector County Sheriff's Office (the "sheriff's office") received a request for (1) a specified call for service on a stated date, (2) notes for two stated case numbers, (3) certain body worn camera footage pertaining to two stated case numbers on a stated date, (4) a specified pink slip for animal control on a stated date, (5) certain cell phone information from a named sheriff's office deputy pertaining to two stated case numbers on a stated date, and (6) policies and guidelines of the sheriff's office. You state the sheriff's office does not have some of the requested information.¹ You also state the sheriff's office released some information. You claim the submitted information is not subject to the Act. You also claim some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. You further claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, you argue the submitted information is not "public information" subject to disclosure under the Act. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained

¹ The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information is "in connection with the transaction of official business" if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. See Gov't Code § 552.002(a-1). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. See *id.* § 552.001(a). Upon review, we find the submitted information consists of information that was created and is maintained by the sheriff's office for the transaction of official business. Accordingly, the submitted information is subject to the Act and must be released, unless the information falls within an exception to public disclosure under the Act.

Next, we note Exhibit C consists of a peace officer's body worn camera recording. 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) of the Occupations Code provides the following:

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 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. 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).

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. *See* Gov’t Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

We note Exhibit B consists of the sheriff’s office’s general policy manual. You state this information reveal specific guidelines related to agency organization, performance of law enforcement duties, criminal investigations, jail operations, suspect handling, and crisis management. You assert release of this information would be detrimental to officer safety, law enforcement operations, administrative functions, and overall law enforcement. Based upon your representations and our review, we agree the release of some of the remaining information, which we marked, would interfere with law enforcement. Accordingly, the

sheriff's office may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate the release of any of the remaining information would interfere with law enforcement or crime prevention. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.108(b)(1).

In summary, 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. The sheriff's office may withhold the information we marked under section 552.108(b)(1) of the Government Code. The sheriff's office must release the remaining 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/pt

Ref: ID# 984969

Enc. Submitted documents

c: Requestor
(w/o enclosures)