



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2022

Ms. Alicia K. Kreh
Counsel for the City of Boerne
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2022-35963

Dear Ms. Kreh:

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# 985200 (COB Req. No. PD-2022-334).

The Boerne Police Department (the "department") received a request for body worn camera recordings, dash camera recordings, and certain communications pertaining to a specified investigation. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

Initially, we note the requestor seeks only video recordings and communications pertaining to the specified investigation. The department has submitted documents beyond these specific categories of information. Thus, the submitted documents that do not consist of the information requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the department is not required to release that information in response to the request.

Next, the department states some of the responsive information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2022-25466 (2022). In that ruling, in relevant part, we determined the department may withhold the information at issue under section 552.108(a)(1) 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, we conclude the department may rely on Open Records Letter No. 2022-25466 as a previous determination and withhold the

identical information, which we have indicated, in accordance with that ruling.¹ *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). Generally, 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 the 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 an agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration the information relates to the pending case, and (2) a representation from the law enforcement agency stating that it wishes to have the information withheld. The department states the information at issue relates to an active criminal investigation that is pending with the Texas Rangers. The department also states, and provides documentation demonstrating, the Texas Rangers object to the disclosure of the information at issue because its release would interfere with the pending investigation. Based on these representations and our review, 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). Accordingly, we find the department may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.²

In summary, we conclude the department may rely on Open Records Letter No. 2022-25466 as a previous determination and withhold the identical information, which we have indicated, in accordance with that ruling. The department may withhold the remaining responsive information under section 552.108(a)(1) 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.

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

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/pt

Ref: ID# 985200

Enc. Submitted documents

c: Requestor
(w/o enclosures)