



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2016

Mr. Robert J. Davis
Counsel for the Collin County Sheriff's Office
Matthews, Shiels, Knott, Eden, Davis & Beanland, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2016-19890

Dear Mr. Davis:

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# 625049 (Your File No. 1600/67375).

The Collin County Sheriff's Office (the "sheriff's office"), which you represent, received a request for the incident report, video recordings, medical records, jail notes, and personnel on duty related to a specified incident. You state you have released some information to the requestor. You argue some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.119 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information includes police officers' body worn camera recordings. 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) 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 recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.¹ 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 some of the submitted information, which we have marked, is not responsive to the request because it was created after the sheriff’s office received the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff’s office is not required to release such information in response to this request.²

Next, you assert some of the submitted information is not subject to the Act because it relates to the judiciary. The Act applies to, in part, information that is “written, produced, collected, assembled, or maintained . . . in connection with the transaction of official business . . . by a governmental body[.]” Gov’t Code § 552.002(a)(1). However, a “governmental body” under the Act “does not include the judiciary.” *Id.* § 552.003(1)(B). Information that is “collected, assembled, or maintained by or for the judiciary” is not subject to the Act but is instead “governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.” *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035). Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ); Open Records Decision No. 646 at 4 (1996) (“function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act”). You contend some of the remaining information consists of records of the judiciary. However, the information at issue indicates it was written, produced, collected, or assembled by the sheriff’s office in connection with its official business of administering the county jail and investigating potential offenses and is maintained by the sheriff’s office for its own purposes. Consequently, we determine the sheriff’s office has failed to establish the information at issue was collected, assembled, or maintained by or for the judiciary. Accordingly, the information at issue is subject to the Act, and we will consider your arguments against its disclosure.

¹As our ruling is dispositive, we need not address your arguments against disclosure of this information.

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

Next, we note the remaining information includes court-filed documents that are subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of “information that is also contained in a public court record” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code, this is a discretionary exception and does not make information confidential under the Act. *See* 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 section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022. Therefore, the marked court-filed documents may not be withheld under section 552.108. As you raise no further exceptions to disclosure for this information, the court-filed documents we have marked must be released.

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 information pertains to a pending criminal investigation or prosecution. Based on your 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 remaining information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 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, the sheriff’s office may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.³

In summary, pursuant to section 1701.661 of the Occupations Code, our ruling does not reach the submitted body worn camera recordings and the sheriff’s office is not required to release them. The sheriff’s office must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, which must be released, the sheriff’s office may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

³As our ruling is dispositive, we need not consider your remaining arguments against disclosure.

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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 625049

Enc. Submitted documents

c: Requestor
(w/o enclosures)