



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 8, 2020

Mr. Robert Carroll
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2020-10503

Dear Mr. Carroll:

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# 821475 (P002374-012920).

The City of Odessa (the "city") received a request for video recordings related to a named police officer during a specified time period. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the city states it notified the Texas Department of Public Safety ("DPS") of the request and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from DPS. We have considered the submitted arguments and reviewed the submitted information.

We note the submitted information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2019-33534 (2019), 2019-33909 (2019), and 2020-06396 (2020). As we have no indication the law, facts, and circumstances on which the prior rulings were based have changed, the city may continue to rely on those rulings as previous determinations and withhold the submitted information in accordance with Open Records Letter Nos. 2019-33534, 2019-33909, and 2020-06396. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent

the submitted information was not previously ruled on, we will address your submitted arguments.

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: (1) 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 a representation from the law enforcement agency that it wishes to have the information withheld. DPS states the information at issue relates to an ongoing criminal investigation. 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 submitted information. The city may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of DPS.¹

In summary, to the extent the submitted information is identical to the information previously submitted and ruled upon by this office, the city may continue to rely on Open Records Letter Nos. 2019-33534, 2019-33909, and 2020-06396 as previous determinations and withhold the submitted information in accordance with those rulings. The city may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of DPS.

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

¹ As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the requested video recordings. *See generally* Occ. Code § 1701.661(a), (e). We also note as our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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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,

Sean McCormick
Attorney
Open Records Division

SMC/be

Ref: ID# 821475

Enc. Submitted documents

c: Requestor
(w/o enclosures)

