



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2016

Mr. Billy W. Byrd
Criminal District Attorney
Upshur County
405 North Titus
Gilmer, Texas 75644

OR2016-22827

Dear Mr. Byrd:

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# 629788.

Upshur County (the "county") received a request for dash camera or body camera recordings, officers' reports, investigation reports, and 911 recordings pertaining to a specified traffic stop occurring on a specified date involving a named peace officer, as well as all documents relating to disciplinary action taken against the named peace officer during a specified time period. You state the county has no information responsive to a portion of the request seeking documents relating to disciplinary actions taken against the named peace officer during a specified time period.¹ 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 representative sample of information.²

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit C relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to Exhibit C.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes an arrestee's address. *See id.* Thus, with the exception of basic information, the county may withhold Exhibit C under section 552.108(a)(2) of the Government Code.³

We note some of the basic information may be excepted from disclosure under section 552.1175 of the Government Code.⁴ This section protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies to peace officers as defined by Article 2.12 of the Code of Criminal Procedure. *Id.* § 552.1175(a)(1). Some of the basic information pertains to an individual who is subject to section 552.1175. Thus, the county must withhold the information we have marked under section 552.1175 if the individual at issue elects to restrict access to this information in accordance with section 552.1175(b). However, if the individual at issue does not elect to restrict access to this information in accordance with section 552.1175(b), then the county may not withhold this information under section 552.1175.

In summary, with the exception of basic information, which must be released, the county may withhold Exhibit C under section 552.108(a)(2) of the Government Code. In releasing the basic information, the county must withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue elects to restrict access

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

to this information in accordance with section 552.1175(b) of the Government Code. The remaining information must be released.

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 629788

Enc. Submitted documents

c: Requestor
(w/o enclosures)