



City of Austin

Law Department

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July 26, 2017

VIA FIRST CLASS MAIL

Honorable Ken Paxton
Attorney General of Texas
Open Records Division
MC-012
P.O. Box 12548
Austin, Texas 78711-2548

Re: Open Records Requests from Mr. Josh Hinkle received
July 12, 2017. (PIR#s35666 and 35668)

Dear Attorney General Paxton,

The Austin Police Department ("the department") received a number of separate requests for information from Mr. Josh Hinkle on July 12, 2017. Thus, today is the tenth business day since the receipt of Mr. Hinkle's requests. Some information will be released to Mr. Hinkle, and some information does not exist.¹ However, the department believes some of the information that is responsive to two of Mr. Hinkle's requests is excepted from disclosure under section 552.108 of the Government Code. This letter is a request for a determination under section 552.301 of the Government Code that the enclosed information is so excepted. Copies of the relevant requests and representative samples of the information at issue are enclosed.

By copy of this letter the department is notifying the requestor that the department wishes to withhold some of the requested information and has asked for a decision from the Attorney General about whether this information is within an exception to public disclosure.

Section 552.108, the "law enforcement exception," provides in pertinent part as follows:

¹ No body worn camera video exists.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2). Section 552.108 is applicable to certain specific types of law enforcement information. Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded case that did not result in a conviction or a deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

Mr. Hinkle has requested various audio and video records regarding a series of January 8, 2017 incidents involving Zachary Khabir Anam. On that date, Mr. Anam was arrested at Barton Creek Square Mall and was in the process of being transported to the department's headquarters building downtown when he produced a handgun and eventually shot himself after the transporting officer stopped the police vehicle in the vicinity of 6th and Lavaca Streets. As mentioned, the department will provide Mr. Hinkle with much of the information related to the arrest and subsequent investigation of the suicide. However, the department seeks to withhold the dash camera video from the transporting officer's vehicle and certain crime scene photographs and video recordings. The information at issue relates to a closed criminal investigation that did not result in conviction or deferred adjudication of any person or officer. Copies of the related offense reports, which will be released, are enclosed for informational purposes. Thus, the department asserts that section 552.108(a)(2) is applicable to this information, and the department seeks to withhold it from disclosure.

Please do not hesitate to contact me at (512) 974-2509 if you have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace
Assistant City Attorney

aws/
Enclosures

cc: *(without enclosures)*
Mr. Josh Hinkle
KXAN – TV
908 W. Martin Luther King, Jr. Blvd
Austin, Texas 78701
