



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 9, 2015

Ms. Alexis G. Allen  
Counsel for the City of Lancaster  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard Street  
Dallas, Texas 75201

OR2015-06856

Dear Ms. Allen:

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# 559478 (Reference #69959, #70069, #70251, #70301).

The Lancaster Police Department (the "department"), which you represent, received five requests for information from four requestors. Three requestors seek information pertaining to a specified incident involving a named individual; one of these requestors also seeks information pertaining to another specified incident. Two requestors seek specified dash and body camera recordings which also pertain to the named individual. You state the department has released some information to the requestors. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state portions of some of the submitted video recordings were shown in court during the trial of the named individual. Section 552.022(a) of the Government Code provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). Thus, to the extent any portions of the submitted video recordings were shown in court, those portions of the submitted video recordings are subject to section 552.022(a)(17) and must be released unless they are made confidential under the Act or other law. *See id.* Although you seek to withhold the information at issue under section 552.108 of the Government Code, this exception is a discretionary exception to disclosure that protects a governmental body's interests 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).* Therefore, to the extent any portions of the submitted video recordings were shown in court, the department may not withhold those portions under section 552.108. However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to those portions of the submitted video recordings shown in court and subject to section 552.022(a)(17). Further, we will consider your arguments against disclosure of the submitted incident report, as well as the portions of the submitted video recordings that were not shown in court.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code § 552.130.* You state, and we agree, some of the submitted video recordings contain motor vehicle record information subject to section 552.130. You also state the department lacks the technological capability to redact the motor vehicle record information from these recordings. Based on this representation, we conclude the department must withhold the video recordings we have indicated in their entireties under section 552.130 of the Government Code.<sup>1</sup> *See Open Records Decision No. 364 (1983).* Further, the department must withhold the motor vehicle record information we have marked in the submitted incident report under section 552.130. However, upon review, we find none of the remaining video recordings contain discernible motor vehicle record information. Therefore, the department may not withhold any of the remaining video recordings under section 552.130 of the Government Code.

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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

claiming section 552.108 must reasonably 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 video recordings not subject to section 552.022(a)(17) are evidence in an ongoing criminal prosecution. Based on this representation and our review, we find 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, with the exception of those portions of the remaining video recordings that were shown in court and are subject to section 552.022(a)(17) of the Government Code, which must be released, the department may withhold the remaining video recordings under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, the public has a legitimate interest in knowing the details of a crime. *See Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))). Upon review, we find the information we have marked in the submitted incident report satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked in the submitted incident report under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the video recordings we have indicated in their entirety, as well as the motor vehicle record information we have marked in the submitted incident report, under section 552.130 of the Government Code. With the exception of those portions of the remaining video recordings that were shown in court and are subject to section 552.022(a)(17) of the Government Code, which must be released, the department

may withhold the remaining video recordings under section 552.108(a)(1) of the Government Code. The department must withhold the information we have marked in the submitted incident report under section 552.101 of the Government Code in conjunction with common-law privacy. 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](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,



Alley Latham  
Assistant Attorney General  
Open Records Division

AKL/dls

Ref: ID# 559478

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)