



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2015

Ms. Stacie S. White
Counsel for City of Euless
Taylor, Olson, Adkins, Sralla, & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2015-09590

Dear Ms. White:

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# 563964.

The Euless Police Department (the "department"), which you represent, received seven requests for information pertaining to a specified incident. You state the department will redact certain information pursuant to section 552.130(c) of the Government Code and Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from Cable News Network, Inc. ("CNN"). *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of seeking a decision from the attorney general. *See* ORD 684.

Initially, CNN asserts the dash camera video footage has been previously released. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See id.* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Whether this information was previously released to the public is a question of fact that this office cannot resolve through the open records ruling process. *See* Open Records Decisions Nos. 554 (1990), 552 (1990). Therefore, we must rule conditionally. Although you raise section 552.108 of the Government Code for this information, this section is a discretionary exception and does not make information confidential under the Act. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, to the extent the department has previously released any of the information at issue, the department has waived its claim under section 552.108 and may not withhold this information on that basis. However, as section 552.1175 of the Government Code does make information confidential under the Act, we will address your argument under this section in the event this information has been previously released. To the extent the information at issue has not been previously released, we will address the department's claim under section 552.108 of the Government Code for this information.

Next, we note the submitted information includes court-filed documents. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, as previously stated, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 665, 586 (1991) (governmental body may waive section 552.108). Therefore, the department may not withhold the marked court-filed documents under section 552.108 of the Government Code. As you raise no further exceptions to disclosure of this information, the department must release the marked court-filed documents. However, we will address your arguments against the disclosure of the remaining information, which is not subject to section 552.022(a)(17).

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 section 773.091 of the Health and Safety Code, which provides in relevant part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision

that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical service (“EMS”) records are deemed confidential under section 773.091 and may only be released in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094. Upon review, we find the information we have marked consists of EMS records subject to chapter 773. Thus, with the exception of the information subject to section 773.091(g), the information at issue must be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety 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: (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 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 information you have indicated relates to an ongoing criminal investigation. Based on this representation and our review, we find release of the information 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, we find section 552.108(a)(1) is applicable to the information at issue.

However, 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information and the information subject to section 552.022, the department may

withhold the information you have indicated under section 552.108(a)(1) of the Government Code.²

To the extent the department has previously released the dash camera video footage, we address section 552.1175(b) of the Government Code. Section 552.1175 provides, in part, the following:

Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). One of the submitted dash camera video recordings contains information pertaining to a peace officer and is not maintained by the department in an employment context. You state the department does not have the technological capability to redact this information from the recording at issue. Therefore, if the individual whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the recording at issue under section 552.1175. If individual does not elect to restrict access to his information, the department may not withhold the recording at issue under section 552.1175. In either instance, we find you have failed to establish section 552.1175 is applicable to any of the remaining dash camera video recordings, and the department may not withhold any of the remaining information on that basis.

In summary, with the exception of the information subject to section 773.091(g), the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. With the exception of the basic information and the information subject to section 552.022 of the Government Code, which must be released, the department may withhold the information you have indicated under section 552.108(a)(1) of the Government Code. However, to the extent the department has previously released the submitted dash camera video footage, the

²As our ruling is dispositive for this information we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

department must release the previously released dash camera video recordings pursuant to section 552.007 of the Government Code; however, if the individual whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the recording you have indicated under section 552.1175 of the Government Code.

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 "N. A. Ybarra".

Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 563964

Enc. Submitted documents

c: 7 Requestors
(w/o enclosures)