



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2015

Mr. Darron Killingsworth
Custodian of Records
Bellmead Police Department
701 Maxfield Street
Bellmead, Texas 76705

OR2015-24170

Dear Mr. Killingsworth:

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# 587509.

The Bellmead Police Department (the "department") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have also received and considered comments from an interested third party. *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). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note a portion of the submitted information consists of officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;

- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.¹ However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.*

Next, we must address the department’s procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general’s decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov’t Code § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the department received the request for information on August 26, 2015. We understand the department was closed on September 7, 2015 in observance of Labor Day. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body’s deadlines under the Act. Accordingly, the department’s ten-business-day deadline was September 10, 2015. However, the envelope in which you submitted the information under section 552.301(b) bears a post meter mark of September 11, 2015. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Accordingly, we find the department failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although the department seeks to withhold the submitted information under section 552.108 of the Government Code, section 552.108 is a discretionary exception to disclosure that protects a governmental body’s interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000)

¹As we are able to make this determination, we need not address the arguments against disclosure of this information.

(discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the need of a governmental body, other than the one that failed to timely seek an open records decision, to withhold information under section 552.108 can provide a compelling reason under section 552.302. Open Records Decision No. 586 (1991). In this instance, we have received correspondence from the McLennan County Criminal District Attorney's Office (the "district attorney's office") objecting to the release of the information at issue. Accordingly, we will consider whether the department may withhold the submitted information under section 552.108 on behalf of the district attorney's office. We also understand the department seeks to withhold some of the information under section 552.101 of the Government Code. Because section 552.101 can provide a compelling reason for non-disclosure, we will also address the applicability of this exception to the submitted information.

Next, we note the submitted information includes a court-filed document. 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 expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the department seeks to withhold this information under section 552.108 of the Government Code on behalf of the district attorney's office, this section is a discretionary exception to disclosure that protects a governmental body's interests and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the court-filed document, which we have marked, under section 552.108 on behalf of the district attorney's office. As you raise no further exceptions to disclosure for the court-filed document, the department must release this document. However, we will address the arguments against disclosure of the remaining information.

Section 552.108(a)(1) of the Government Code exempts 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 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). In a letter to this office, the district attorney's office objects to release of the remaining information because it would interfere with an ongoing criminal investigation and prosecution. We note the remaining information includes a citation, which we have marked. Because the individual who was cited received a copy of the citation, we find release of the citation will not interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold the citation under section 552.108(a)(1) on behalf of the district attorney's office. However, based on the district attorney's office's representation and our review, we find release of the remaining 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) (delineating law enforcement interests 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 remaining information.

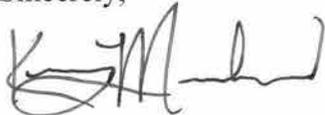
However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the marked citation and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.²

In summary, the department must release the information we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of the marked citation and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 587509

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Sterling Harmon
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County of McLennan
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(w/o enclosures)