



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 28, 2016

Ms. Victoria D. Honey
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-02133

Dear Ms. Honey:

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# 595896 (City PIR Nos. W046957, W047010, and W047005).

The City of Fort Worth (the "city") received three requests from different requestors for information pertaining to a specified officer-involved shooting incident.¹ You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² We have

¹Although you state you received a fourth request on November 16, 2015, we note this letter is a clarification of the first request. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²Although you do not cite to section 552.130 of the Government Code in your brief to this office, we understand you to raise this section based on your markings.

considered the exceptions you claim and reviewed the submitted information, a portion of which constitutes a representative sample.³

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, two of the requestors do not give the requisite information under section 1701.661(a). As these requestors 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 to these requestors. 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.*

We note the first requestor clarified his request to give the requisite information under section 1701.661(a) for the body worn camera recordings. Section 1701.662 of the Occupations Code provides, in relevant part:

- (a) Notwithstanding Section 552.301(b), Government Code, a governmental body's request for a decision from the attorney general about whether a requested body worn camera recording falls within an exception to public disclosure is considered timely if made not later than the *20th business day* after the date of receipt of the written request.

³We 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.

See id. § 1701.662(a) (emphasis added). Although you state you failed to comply with the time periods prescribed by section 552.301(b) as to the body worn camera recordings at issue in the clarified request, we find you timely submitted your request to our office pursuant to section 1701.662(a). Accordingly, we will address your arguments for the body worn camera recordings as to the first requestor.

Next, you state some of the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-03386 (2015), 2015-06593 (2015), and 2015-15549 (2015). In those previous rulings, we concluded the city may withhold certain information under section 552.108(a)(1) of the Government Code, with the exception of basic information, which must be released. In this instance, the city asserts the submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Thus, we find the circumstances have changed and the city may not rely on Open Records Letter Nos. 2015-03386, 2015-06593, and 2015-15549 as previous determinations in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your arguments against disclosure of the submitted information.

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 the submitted information pertains to a concluded investigation 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 the submitted information.

However, as you acknowledge, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic 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 does not include motor vehicle record information protected by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly,

with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(2) of the Government Code.⁴

In summary, pursuant to section 1701.661 of the Occupations Code, the submitted body worn camera recordings need not be released to the second and third requestors. With the exception of basic information, which must be released, the remaining information may be withheld under section 552.108(a)(2) 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 595896

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.