



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 6, 2016

Mr. J. Eric Magee  
Counsel for the County of Victoria  
Allison, Bass & Magee, L.L.P.  
402 West 12th Street  
Austin, Texas 78701

OR2016-07704

Dear Mr. Magee:

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# 604459.

The Victoria County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information pertaining to a specified incident. You state the sheriff's office will release some information. You claim the submitted information is excepted from disclosure under sections 552.108, 552.111, 552.114, 552.130, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although you initially raised section 552.101 of the Government Code as an exception to disclosure, you provided no arguments regarding the applicability of this section. Accordingly, we assume you no longer assert this section. *See* Gov't Code §§ 552.301, .302. You also raise section 552.026 of the Government Code, however, section 552.026 is not an exception to disclosure. Rather, section 552.026 provides that the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974. *Id.* § 552.026. Further, we note the sheriff's office did not comply with section 552.301 of the Government Code in requesting this decision with regard to its claim under section 552.114 of the Government Code. *See id.* § 552.301(b), (e). Nonetheless, because section 552.114 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>2</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

Initially, we note the information we have marked is not responsive to the instant request because it does not pertain to the specified incident. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information in response to this request.

Next, the sheriff's office asserts some of the responsive information is excepted from disclosure under the Family Education Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>3</sup> Consequently, education records that are responsive to a request for information under the Act should not be submitted to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You have submitted unredacted education records for our review. We note the sheriff's office is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an "educational agency" within the meaning of FERPA). However, FERPA contains provisions that govern access to education records that an educational agency or institution transfers to a third party. We are unable to determine whether the sheriff's office obtained any of the information at issue directly from an educational institution. To the extent any of the responsive information was obtained from an educational institution, so as to be governed by FERPA, we will not address the applicability of FERPA to the information at issue, because our office is prohibited from reviewing education records to determine whether appropriate redactions have been made under FERPA. Such determinations under FERPA must be made by the educational authorities from which education records were obtained. Likewise, we do not address your argument under section 552.114 of the Government Code for the information at issue. *See* Gov't Code § 552.114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). Thus, the sheriff's office should contact any educational institutions from which the information at issue was obtained, as well as the DOE, regarding the applicability of FERPA to the information at issue. To the extent that the information at issue is not governed by FERPA, we will address your arguments against its disclosure.

Next, we note the responsive information includes 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:

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<sup>3</sup>A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

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.<sup>4</sup> 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.* § 1701.661(b).

Next, we note the remaining responsive information consists of a completed investigation subject to section 552.022(a)(1) of the Government Code. Section 552.022(a) 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:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov’t Code § 552.022(a)(1). The sheriff’s office must release the information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* Although you raise section 552.111 of the Government Code for the information at issue, we note this exception is discretionary and does not make information confidential under the Act. *See Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver).* As such, the sheriff’s office may not withhold any portion of the information at

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<sup>4</sup>As we reach this determination, we need not address your arguments against disclosure of this information.

issue under section 552.111. We note the attorney work product privilege is also found in rule 192.5 of the Texas Rules of Civil Procedure and the Texas Supreme Court has held the Texas Rules of Civil Procedure are “other law” within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). However, the Texas Rules of Civil Procedure apply only to “actions of a civil nature.” *See* TEX. R. CIV. P. 2. Thus, because the information at issue relates to a criminal case, the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure does not apply to the information at issue, and the information may not be withheld on that basis. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your argument under section 552.108 for the information at issue. Further, as sections 552.130 and 552.137 of the Government Code make information confidential, we will consider the applicability of these sections to the remaining responsive information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 remaining responsive information concerns a concluded investigation that did not result in a conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the remaining responsive information.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the 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 the types of information considered to be basic information). We note basic information does not include information subject to section 552.130 or section 552.137 of the Government Code. *See* ORD 127 at 3-4. Thus, with the exception of basic information, the sheriff’s office may withhold the remaining responsive information under section 552.108(a)(2) of the Government Code.<sup>5</sup>

In summary, pursuant to section 1701.661 of the Occupations Code, the submitted body worn camera recordings need not be released to the requestor. With the exception of the responsive basic information, which the sheriff’s office must release, the sheriff’s office may

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

withhold the remaining responsive information under section 552.108(a)(2) of the Government Code.<sup>6</sup>

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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 604459

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>6</sup>We note the basic information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. See Gov't Code § 552.147(b).