



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 8, 2016

Ms. Ileana Fernandez
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2016-17746

Dear Ms. Fernandez:

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# 627675.

The Mesquite Police Department (the "department") received two requests for information pertaining to a specified incident. You state the department released some information. You state the department will redact some information pursuant to Open Records Letter Nos. 2012-01375 (2012) and 2012-06459 (2012).¹ You claim the submitted information is excepted from disclosure under section 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The submitted information includes police 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 provides, in relevant part, the following:

¹Open Records Letter No. 2012-01375 is a previous determination issued to the department authorizing the department to withhold information in a call sheet that reveals the existence of a motor vehicle lien under section 552.101 of the Government Code in conjunction with common-law privacy, without requesting a decision from this office. Open Records Letter No. 2012-06459 authorizes the department to withhold the price of a motor vehicle in a call sheet under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting a decision under section 552.301 of the Government Code.

(a) 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 requestors do not give the requisite information under section 1701.661(a). As the 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.² 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 some of the remaining information is subject to section 552.022 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:

...

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

Gov’t Code § 552.022(a)(17). The remaining information contains court-filed documents that 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 the department raises section 552.108 of the Government Code for this information, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the marked court-filed documents under section 552.108. Furthermore, although the department seeks to withhold portions of this information under section 552.101 of the Government Code in

²As we are able to make this determination, we need not address your arguments against disclosure of this information.

conjunction with common-law privacy, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As a result, the department may not withhold the information that is subject to section 552.022(a)(17) under section 552.101 of the Government Code in conjunction with common-law privacy. However, because section 552.130 of the Government Code makes information confidential under the Act, we will consider the applicability of this exception for the information subject to section 552.022(a)(17). We will also consider the department's argument under section 552.108 for the information that is not subject to section 552.022(a)(17).

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 claiming section 552.108(a)(1) must 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 information pertains to a pending criminal case. Based on your representation, we conclude 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) (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, 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, you may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the court-filed documents contain motor vehicle record information subject to section 552.130 of the Government Code. However, because section 552.130 protects privacy interests, the respective requestors have a right of access to their client's motor vehicle record information pursuant to section 552.023. Thus, the department must generally withhold the motor vehicle record information in the court-filed documents under section 552.130 of the

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

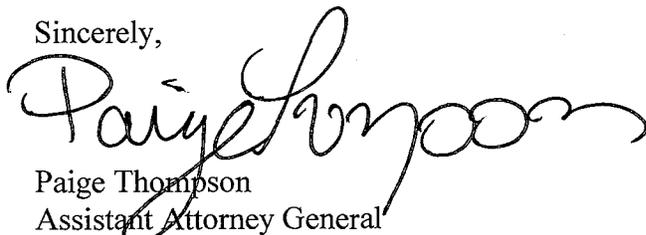
Government Code; however, to the extent the motor vehicle record information belongs to the requestors' clients, the department may not withhold it from that requestor under section 552.130 of the Government Code.

In summary, as the requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information, and the department need not release the submitted body camera recordings at issue in response to these requests for information. The department must release the marked court-filed documents pursuant to section 552.022(a)(17) of the Government Code. With the exception of the basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the marked court-filed documents, the department must generally withhold the motor vehicle record information under section 552.130 of the Government Code; however, to the extent the motor vehicle record information belongs to the requestors' clients, the department may not withhold it from that requestor under section 552.130 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 627675

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)