



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 8, 2016

Mr. James T. Jeffrey, Jr.  
Counsel for the City of Dalworthington Gardens  
Law Offices of Jim Jeffrey  
2214 Park Springs Boulevard  
Arlington, Texas 76013

OR2016-17792

Dear Mr. Jeffrey:

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# 621589.

The City of Dalworthington Gardens (the "city"), which you represent, 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 considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes city 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(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.<sup>1</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).

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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue relates to a concluded case that did not result in conviction or deferred adjudication. Based on your representations, we conclude section 552.108(a)(2) is applicable to the remaining information.

However, section 552.108 of the Government Code 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). You assert the city need not release basic information in this instance on the basis of the decision in *City of Carrollton v. Paxton*, No. 03-13-00571-CV, 2016 WL 1305196 (Tex. App.—Austin March 31, 2016, no pet. h.). However, the time for filing a petition for review with the Texas Supreme Court has not expired. Tex. R. App. P. 53.7. Accordingly, the city may not withhold basic information based on the court’s decision in that case. Thus, with the exception of the basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(2).<sup>2</sup>

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<sup>1</sup>As we reach this determination, we need not address your arguments against disclosure of this information.

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

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses the informer’s privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer’s privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer’s identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer’s privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

You state portions of the basic information identify complainants who reported a possible violation of law to the city. There is no indication the subject of the complaint knows the identities of the complainants. Thus, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, you have not demonstrated any portion of the remaining basic information identifies an informer for purposes of the common-law informer’s privilege; thus, the city may not withhold any of the remaining basic information under section 552.101 of the Government Code on that basis.

In summary, as the requestor 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 city need not release the submitted body camera recordings at issue in response to this request for information. With the exception of basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code. In releasing the basic information, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

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 'Cristian Rosas-Grillet', with a long horizontal flourish extending to the right.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/bw

Ref: ID# 621589

Enc. Submitted documents

c: Requestor  
(w/o enclosures)