



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



February 4, 2015

Lieutenant Russell Brown
Records Manager
Bellaire Police Department
5110 Jessamine
Bellaire, Texas 77401-4425

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2015-02237

Dear Lieutenant Brown:

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# 550815 (PIR OR 14-14).

The Bellaire Police Department (the "department") received a request for a specified dash-camera video. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.¹ We have also received and considered

¹The requestor alleges 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 procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless there is a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision Nos. 319 (1982), 177 (1977). A compelling reason exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The need of a governmental body, other than the one that failed to comply with the procedural requirements of section 552.301, to withhold information under sections 552.103 and 552.108 can provide compelling reasons under section 552.302. Open Records Decision No. 586 (1991), 469 (1987). Regardless of whether the department failed to comply with section 552.301, you state the Harris County District Attorney's Office (the "district attorney's office") and the Houston Police Department assert the information at issue should be withheld under sections 552.103 and 552.108 of the Government Code. Therefore, we will consider whether the information at issue may be withheld on behalf of the district attorney's office and the Houston Police Department under sections 552.103 and 552.108.

comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

The requestor asserts the submitted video recording was shown in court during the trial of a named individual. 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). Thus, to the extent any portion of the submitted video recording was shown in court, that portion of the submitted video recording is subject to section 552.022(a)(17) and must be released unless it is made confidential under the Act or other law. *See id.* Although the district attorney's office and the Houston Police Department seek to withhold the information at issue under sections 552.103 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 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, to the extent any portion of the submitted video recording was shown in court, the department may not withhold that portion under section 552.103 or section 552.108. However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to that portion of the submitted video recording shown in court and subject to section 552.022(a)(17).² However, to the extent any portion of the submitted video recording was not shown in court, we consider your arguments against disclosure.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, to the extent any portion of the submitted information was shown in court, the department must withhold the

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

audible and discernible license plate information from that portion of the submitted video recording under section 552.130 of the Government Code.

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 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). You state the submitted information is related to a capital murder case currently being appealed. Further, you state the district attorney’s office and the Houston Police Department object to release of the submitted information because it relates to a pending criminal prosecution. Based upon these representations, we conclude release of the submitted 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we conclude section 552.108(a)(1) of the Government Code is applicable to the submitted information. Thus, with the exception of those portions of the submitted information shown in court, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office and the Houston Police Department.³

In summary, to the extent any portion of the submitted information was shown in court, the department must withhold the audible and discernible license plate information from that portion of the submitted video recording under section 552.130 of the Government Code and release the remaining information. To the extent any portion of the submitted information was not shown in court, the department may withhold that portion of the submitted video recording under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office and the Houston Police Department.

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

³As our ruling is dispositive, we need not address the remaining argument against disclosure.

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 be 'DO', with a long horizontal line extending to the right.

Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 550815

Enc. Submitted documents

c: Requestor
(w/o enclosures)

JAN 22 2019

Cause No. D-1-G^N15-000633

At 2:21 p.M.
Velva L. Price, District Clerk

CITY OF BELLAIRE, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	200th JUDICIAL DISTRICT
	§	
KEN PAXTON, ATTORNEY GENERAL OF TEXAS, <i>Defendant.</i>	§	
	§	
	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which the City of Bellaire (the City) sought to withhold certain information. All matters in controversy between Plaintiff, the City, and Defendant, Ken Paxton, Attorney General of Texas (Attorney General), have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Texas Government Code section 552.325(c), the Attorney General sent certified letter to the requestor, Mr. Brian Rogers, on December 18, 2018, informing him of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that the City will withhold the information at issue. The requestor was also informed of his right to intervene in the suit to contest the withholding of this information. Verification of the certified mailing of this notification is attached to this judgment.

The requestor has not filed a motion to intervene.

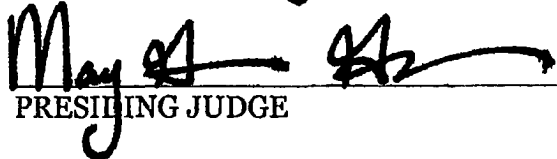


After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

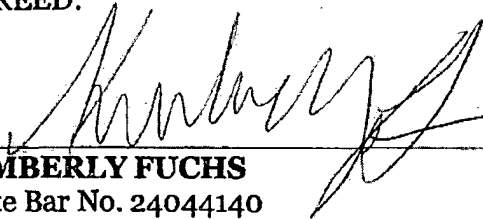
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Under Texas Government Code section 552.101 in conjunction with constitutional privacy and *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174, 124 S.Ct. 1570, 158 L.Ed.2d 319 (2004), the City must withhold the portions of the dashcam video which depict the deaths of the victims or show images of the dying or deceased victims. The parties agree that the remainder of the video, including the portion documenting the high-speed chase, will be released to the requestor.
2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between the City of Bellaire and the Attorney General and is a final judgment.

SIGNED the 22nd day of January, 2019
~~2018.~~


PRESIDING JUDGE

AGREED:



KIMBERLY FUCHS

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ATTORNEY FOR DEFENDANT



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ATTORNEY FOR PLAINTIFF

A

Cause No. D-1-G^N15-000633

CITY OF BELLAIRE,
Plaintiff,

v.

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS,
Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

200th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between the City of Bellaire, (the City) and Ken Paxton, Attorney General of Texas (the Attorney General). This Agreement is made on the terms set forth below.

Background

This is a Public Information Act (PIA) lawsuit, challenging Open Records Letter Ruling OR2015-02237, in which the Open Records Division of the Attorney General (ORD) required the release of a dashcam video. The Attorney General ruled that the exceptions raised by the City did not apply, and the City was required to release the video.

After this lawsuit was filed, the City provided statements by the family members of the victims of the crime depicted in the video. The family members objected to the video's release and asserted their privacy rights. The Attorney General determined that *Nat'l Archives & Records Admin. v. Favish* applies to the video, and that the video should be withheld pursuant to Texas Government Code section 552.101 in conjunction with constitutional privacy. 541 U.S. 157, 174, 124 S.Ct. 1570, 158 L.Ed.2d 319 (2004). Therefore, the parties wish to resolve this case without further litigation.

Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:


1. Under Texas Government Code section 552.101 in conjunction with constitutional privacy and *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 174, 124 S.Ct. 1570, 158 L.Ed.2d 319 (2004), the City must withhold the portions of the dashcam video which depict the deaths of the victims or show images of the dying or deceased victims. The parties agree that the remainder of the video, including the portion documenting the high-speed chase, will be released to the requestors.
2. The Attorney General agrees that he will notify the requestors, as required by Texas Government Code section 552.325(c), of the proposed settlement and of their right to intervene to contest the City's right to withhold the information.
3. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.
4. Each party to this Agreement will bear its own costs, including attorney fees relating to this litigation.
5. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

6. The City warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the City has against the Attorney General arising out of the matters described in this Agreement.

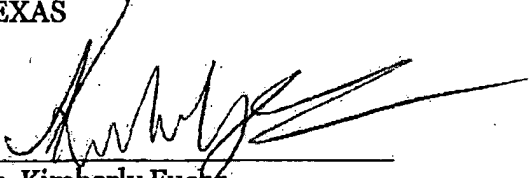
7. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against the City arising out of the matters described in this Agreement.

8. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

CITY OF BELLAIRE

By: 
name: Alan Petrov
firm: Johnson Petrov, LLP
Date: 12/17/18

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS

By: 
name: Kimberly Fuchs
title: Assistant Attorney General,
Administrative Law Division
Date: 12/17/18