



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2016

Mr. Guillermo Trevino
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-06610

Dear Mr. Trevino:

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# 602520 (City PIR No. W048229).

The City of Fort Worth (the "city") received a request for information related to two specified incidents and information on any occurrences of a specified type of incident in the city during a specified time frame.¹ You state the city has released some information to the requestor. We understand the city will withhold motor vehicle record information under section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.² You claim the submitted information is

¹You state the city sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (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).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance

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, portions of which consist of representative samples.³

Initially, you inform us the requestor was required to make a deposit for payment of anticipated costs for records relating to any occurrences of the specified type of incident in the city during the specified time frame. *See* Gov't Code § 552.263(a) (governmental body may require deposit or bond for payment of anticipated costs in certain instances if governmental body provides requestor with written itemized statement). You state the city has not received the required deposit. Therefore, the city is not required to release any responsive information for which it has not received the required deposit. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered received on date governmental body receives deposit or bond); *see also id.* § 552.263(f) (requestor who fails to make a deposit or post a bond required under subsection (a) before the 10th business day after the date the deposit or bond is required is considered to have withdrawn the request for the copy of the public information that precipitated the requirement of the deposit or bond). However, if the city timely receives the required deposit, the city must seek a ruling from this office before withholding any responsive information.

Next, we note some of the submitted 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[.]

Id. § 552.022(a)(17). The submitted information contains court-filed documents, which we have marked, 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.* You seek to withhold the information subject to section 552.022(a)(17) under section 552.108 of the Government Code. However,

with section 552.130(e). *See id.* § 552.130(d), (e). 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 requesting a decision from this office under the Act. *Id.* § 552.147(b).

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 that those records contain substantially different types of information than that submitted to this office.

section 552.108 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the submitted court-filed documents may not be withheld under section 552.108 of the Government Code. Additionally, we note common-law privacy is not applicable to information contained in public records. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain); *see also Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain). Accordingly, the city may not withhold the information in the submitted court-filed documents under section 552.101 in conjunction with common-law privacy. As you claim no other exception to the disclosure of the marked court-filed documents, they must be released.

Next, 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, which is encompassed by section 552.101 of the Government Code.⁴ 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.⁵ 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

⁴Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

⁵As our determination is dispositive, we need not address your arguments against disclosure of this information.

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)(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 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 provide representations stating the submitted information pertains to active criminal investigations or prosecutions. Based on these representations, 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 submitted information.

However, we note 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). We note basic information does not include dates of birth. *See* ORD 127 at 3-4. Thus, with the exception of the basic information and the information subject to section 552.022(a)(17) of the Government Code, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁶

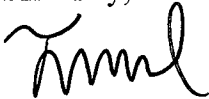
In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information, and the city need not release the submitted body camera recordings at issue in response to this request for information. With the exception of the basic information and the information subject to section 552.022(a)(17) of the Government Code, which must be released, the city may withhold the remaining information under section 552.108(a)(1) 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.

⁶As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 602520

Enc. Submitted documents

c: Requestor
(w/o enclosures)