



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2016

Ms. Ana Viera Ayala
Assistant General Counsel
Office of General Counsel
The University of Texas System
201 West 7th Street, Suite 600
Austin, Texas 78701-2901

OR2016-24559

Dear Ms. Ayala:

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# 633323 (OGC# 171585).

The University of Texas at Austin (the "university") received a request for reports pertaining to a specified individual. 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 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.¹ 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) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the remaining submitted information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to the remaining information.

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 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). Thus, with the exception of the basic information, you may withhold the remaining information from disclosure based on section 552.108(a)(2).

You claim section 552.101 of the Government Code for the basic information. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by judicial decision and the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm. *Id.* In applying this standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119. You state the complainant fears retaliation from the requestor, and that the officer who assisted the complainant represented that release of the remaining information would create a substantial threat of serious harm against the complainant. However, you do not provide this office with any specific threats

¹As our ruling is dispositive, we need not address your argument against disclosure of this information.

made against the complainant. Upon review, we conclude you have failed to demonstrate the applicability of the common-law physical safety exception to the basic information. Accordingly, the university may not withhold the basic information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

In summary, pursuant to section 1701.661 of the Occupations Code, our ruling does not reach the body worn camera recordings at issue, and they need not be released. With the exception of basic information, which must be released, the university may withhold the remaining information under section 552.108(a)(2) 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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 633323

Enc. Submitted documents

c: Requestor
(w/o enclosures)