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ATTORNEY GENERAL OF TEXAS

December 2, 2016

Mr. Darrell Davis
Counsel for City of Palmhurst
King, Guerra, Davis, and Garcia, P.C.
P.O. Box 1025
Mission, Texas 78573

OR2016-26710

Dear Mr. Davis:

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# 636367.

The City of Palmhurst (the "city"), which you represent, received two requests from different requestors for information pertaining to a specified traffic accident. 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, you question whether the Act is implicated with regard to the first requestor because he made his request for information under the Freedom of Information Act, which is a federal law that governs the release of information held by federal governmental bodies. *See* 5 U.S.C. § 552 (Freedom of Information Act). The Act is implicated whenever a requestor submits to a Texas governmental body a written request for inspection or copies of public information. *See* Gov't Code §§ 552.003(6) (defining "requestor"), .301(a) (after receiving "a written request for information," a governmental body must ask for a decision from the attorney general if it wishes to withhold that information). The Act only requires the request be made in writing. *See id.* § 552.301(c). Whether the requestor asserts a right to inspect public information under the Freedom of Information Act or other, similar laws does not affect the rights and duties of a governmental body to release or withhold public information under the Act. The requestor here made a written request to the city to inspect public information; therefore, whether the city can withhold that information from release is determined by the Act. Accordingly, we will address your arguments under the Act against disclosure of the submitted information for both requestors.

Next, we note the requested information includes city police body worn camera video. 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 requestors do not give the requisite information under section 1701.661(a). As the requestors did not properly request the body worn camera video 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).

We note the remaining information contains court-filed documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of “information that is also contained in a public court record[.]” unless the information is made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although you raise 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 generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold any of the information subject to section 552.022(a)(17) under section 552.108. As no further exceptions to disclosure are raised for this information, which we have marked, it must be released. However, we will address the city’s arguments against disclosure for the remaining information not subject to section 552.022(a)(17) of the Government Code.

Next, we note the responsive information includes a CR-3 accident report. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This

¹As we are able to make this determination, we need not address the arguments against disclosure of this information.

section encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the second requestor is a person listed under section 550.065(c). Thus, the second requestor has a right of access to the submitted accident report under section 550.065(c) of the Transportation Code. However, we have no indication the first requestor is a person listed under section 550.065(c). Thus, with regard to the first requestor, the submitted accident report is confidential under section 550.065(b), and the city must withhold it from the first requestor under section 552.101 of the Government Code. However, section 550.065(c-1) requires the city to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the first requestor has a right of access to the redacted accident report. Although you assert section 552.108 of the Government Code to withhold the information at issue, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.108 is a general exception under the Act, the requestors' statutory access under sections 550.065(c) and 550.065(c-1) prevails, and the city may not withhold the information to which the requestors have access under section 552.108 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(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 at issue pertains to a pending criminal investigation. 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 remaining responsive 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*. 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, which must be released, the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

In summary, as the requestors did not properly request the body worn camera video 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 worn camera video at issue in response to these requests for information. The city must release the court-filed documents we have marked pursuant to section 552.022(a)(17) of the Government Code. The city must release the submitted accident report to the second requestor under section 550.065(c) of the Transportation Code. With respect to the first requestor, the submitted accident report is confidential under section 550.065(b) of the Transportation Code and must be withheld pursuant to section 552.101 of the Government Code, but the city must release the redacted accident report to the first requestor under section 550.065(c-1) of the Transportation Code. With the exception of the basic information, which must be released, the city may withhold the remaining responsive 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.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 636367

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)