



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 19, 2016

Mr. Justin Pruitt
Assistant City Attorney
Office of the City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2016-27916

Dear Mr. Pruitt:

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# 639143 (Internal Ref. No. 1445).

The City of Lubbock (the "city") received a request for information pertaining to a specified 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, we note the requestor seeks a city police officer's body worn camera recording. 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 recording 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 552.101 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. Section 552.101 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).

The remaining information contains a CR-3 accident report. In this instance, the requestor may be a person listed under section 550.065(c)(4). Although you raise section 552.101 of the Government Code in conjunction with common-law privacy, we note a specific statutory right of access overcomes the common law. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle). Further, although you assert section 552.108 for 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 requestor’s statutory access under section 550.065(c) prevails and the city may not withhold the information at issue under section 552.108 of the Government Code. Thus, to the extent the requestor is a person listed under section 550.065(c)(4) of the Transportation Code, the city must release the accident report

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

to the requestor pursuant to section 550.065(c) of the Transportation Code. To the extent the requestor is not a person listed under section 550.065(c)(4), then the requestor does not have a right of access to the accident report under section 550.065(c). In this event, the submitted accident report is confidential under section 550.065(b) of the Transportation Code, and the city must withhold it 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. Gov't Code § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* As noted above, a specific statutory right of access prevails over the common-law and the Act's general exceptions to public disclosure, such as section 552.108. *See Collins*, 297 S.W.3d at 415; *see also* ORDs 613 at 4, 451. Thus, the requestor's statutory right of access under section 550.065(c-1) prevails and the city may not withhold the information at issue under either section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code. Therefore, if the requestor is not a person listed under section 550.065(c)(4), then the city must release the redacted accident report to the requestor pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* 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)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on your representation and our review, 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." *Id.* § 552.108(c). Section 552.108(c) refers to the basic 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 types of information considered to be basic information). In this instance, some of the submitted information consists of a computer-aided dispatch ("CAD") report. In Open Records Decision No. 649 (1996), this office concluded information contained in a CAD report is substantially the same as basic information. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (there is not qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public).

Accordingly, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(2) of the Government Code.²

You claim the basic information is subject to the doctrine of common-law privacy, which is encompassed by section 552.101 of the Government Code. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, you seek to withhold the entirety of the basic information under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the entirety of the basic information under section 552.101 of the Government Code on that basis. Further, we find you have failed to demonstrate any portion of the basic information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the basic information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, pursuant to section 1701.661 of the Occupations Code, as the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. To the extent the requestor is a person listed under section 550.065(c)(4) of the Transportation Code, the city must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. If the requestor is not a person listed under section 550.065(c)(4) of the Transportation Code, the submitted accident report is confidential under section 550.065(b) of the Transportation Code and must be withheld under section 552.101 of the Government Code, but the city must release the redacted accident report to the requestor pursuant to section 550.065(c-1) of the Transportation Code. 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.

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.

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

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 that reads "Cole Hutchison". The signature is written in a cursive style with a large, prominent "C" at the beginning.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 639143

Enc. Submitted documents

c: Requestor
(w/o enclosures)