



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 21, 2017

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main Street Suite 308
Temple, Texas 76501

OR2017-03776

Dear Ms. Thomas:

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# 652256.

The City of Temple (the "city") received a request for a specified report. You claim the submitted information is exempted 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 requested information includes a city police officer's body worn camera video 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 video 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 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the submitted information involves delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). However, we are unable to determine the age of the suspect listed in the information at issue. Accordingly, we must rule in the

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

alternative. If the suspect at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then, as it does not appear any of the exceptions in section 58.007 apply, and the city must withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the suspect at issue was under ten years of age or was seventeen years of age or older at the time of the conduct, then the information does not involve juvenile conduct for purposes of section 58.007(c) of the Family Code, and no portion of the information at issue may be withheld under section 552.101 of the Government Code on that basis. In that instance, we will consider your remaining argument for the information at issue.

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 must explain how and why section 552.108(a)(1) is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the submitted information 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*, (Tex. 1976). Thus, we conclude section 552.108(a)(1) is applicable to the submitted information.

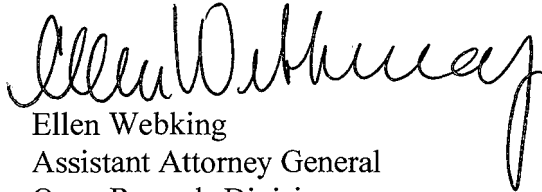
However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d 177 at 186-188; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of this basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, as the requestor did not properly request the body worn camera video recording at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. If the suspect at issue in the submitted information was ten years of age or older and under seventeen years of age at the time of the conduct at issue, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If the suspect at issue in the submitted information was under ten years of age or was seventeen years of age or older at the time of the conduct at issue, then with the exception of basic information, the city may withhold the submitted 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 652256

Enc. Submitted documents

c: Requestor
(w/o enclosures)