



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 11, 2017

Ms. Bobbi Kacz
Office of the City Attorney
City of Alvin
216 West Sealy Street
Alvin, Texas 77511

OR2017-07639

Dear Ms. Kacz:

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# 652599 (Ref. No. CA-16-0100).

The City of Alvin (the "city") received a request for information pertaining to a specified incident involving a named individual. You state the city will redact information of living individuals pursuant to sections 552.130(c), 552.136(c), and 552.147(b) of the Government Code and Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requested information includes city police officers' body worn camera videos. Body worn cameras are subject to chapter 1701 of the Occupations Code.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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 with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

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 videos at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.² 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 excepts 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 shall 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).

Here, the requestor is a person listed under section 550.065(c). Although the city asserts section 552.108 to withhold the information, 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

²As we are able to make this determination, we need not address the arguments against disclosure of this information.

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 under section 552.108 of the Government Code. Thus, the city must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code.

Next, we note the submitted information includes a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[.]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the city raises 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 the information subject to section 552.022, which we have marked, under section 552.108. As no other exceptions to disclosure are raised for this information, it must be released.

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 pertains to a pending criminal investigation and prosecution. Based on this representation, we conclude section 552.108(a)(1) is generally applicable to the submitted information. *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). We note, however, the information at issue includes a DIC-24 statutory warning and a DIC-25 notice of suspension. The city provided copies of these forms to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the DIC-24 and DIC-25 forms may not be withheld under section 552.108(a)(1).

Additionally, 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 "front-page" information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Accordingly, with the exception of the DIC-24 and DIC-25 forms and basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

The DIC-24 and DIC-25 forms contain information subject to section 552.101 of the Government Code. Section 552.101 also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the city must withhold the date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, as the requestor did not properly request the body worn camera videos 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 videos at issue in response to this request for information. The city must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. The city must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of the DIC-24 and DIC-25 forms and basic information, which must be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the DIC-24 and DIC-25 forms, the city must withhold the date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/som

Ref: ID# 652599

Enc. Submitted documents

c: Requestor
(w/o enclosures)