



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 20, 2017

Mr. James Santangelo
Assistant City Attorney
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2017-13549

Dear Mr. Santangelo:

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# 662390.

The City of Missouri City (the "city") received two requests from different requestors for information related to a specified car crash. The city claims the submitted information is exempted from disclosure under sections 552.101, 552.103, 552.108, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information. Additionally, the city provides documentation showing it has notified an individual of the right to submit comments to this office why some of the submitted information should not be released.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 provides, in relevant part, the following:

¹As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

(a) 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 provide the requisite information under section 1701.661(a) for each of the submitted body worn camera recordings. The body worn camera recordings that were not properly requested pursuant to chapter 1701 of the Occupations Code need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (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).

Next, we note the remaining information includes court-filed documents. 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). The city seeks to withhold the information at issue under sections 552.103 and 552.108 of the Government Code. However, these exceptions are discretionary in nature and do not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold the court-filed documents, which we have marked, under section 552.103 or section 552.108. We also note common-law privacy is not applicable to information contained in public court records. *See Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication); *see also Cox Broadcasting Corp. v. Cohn*, 420 U.S. 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the city may not withhold information contained in the court-filed documents under section 552.101 of the Government Code in conjunction with common-law privacy. However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to the court-filed documents subject to section 552.022(a)(17). Further, we will address the city’s arguments against disclosure of the remaining information.

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). The city states the remaining information pertains to an active criminal investigation or prosecution. Based on this 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, we note 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, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.²

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Accordingly, the city must withhold the motor vehicle record information it marked within the documents subject to section 552.022(a)(17) of the Government Code under section 552.130 of the Government Code.

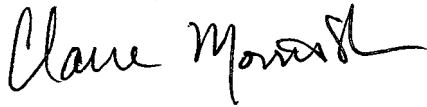
In summary, the body worn camera recordings that were not properly requested pursuant to chapter 1701 of the Occupations Code need not be released. With the exception of the marked documents subject to section 552.022(a)(17) of the Government Code and the basic information, which must generally be released, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code; however, in releasing the marked documents subject to section 552.022, the city must withhold the motor vehicle record information it marked under section 552.130 of the Government Code.

²As our ruling is dispositive for this information, we need not address the remaining arguments against its disclosure, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 662390

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

Third Party
(w/o enclosures)