



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2017

Ms. Brandy Barrett
City Secretary
Westworth Village Police Department
311 Burton Hill Road
Westworth Village, Texas 76114

OR2017-22074

Dear Ms. Barrett:

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# 677147.

The Westworth Village Police Department (the "department") received a request for specified video recordings and radio communications and specified policies.¹ The department indicates it has released some information. The department claims the submitted information is excepted from disclosure under sections 552.108, 552.1175, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹We note the department sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note although the department also raises section 552.117 of the Government Code, we note section 552.1175 is the proper exception to raise for information not held in an employment context.

³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

We note the submitted information includes department police officers' body worn camera recordings. 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 recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.⁴ 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 552.108 of the Government Code provides in part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;
- (3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or
- (4) it is information that:

⁴As we are able to make this determination, we need not address the department's arguments against disclosure of this information.

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). A governmental body claiming section 552.108(a)(1) or 552.108(b)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The department does not inform us the remaining information pertains to an ongoing criminal investigation or prosecution, nor has the department explained how its release would interfere with the detection, investigation, or prosecution of crime. Thus, the department has not met its burden under section 552.108(a)(1) or 552.108(b)(1). A governmental body claiming section 552.108(a)(2) or 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The department has not demonstrated the investigation at issue has concluded in a result other than conviction or deferred adjudication. Thus, the department has not met its burden under section 552.108(a)(2) or 552.108(b)(2). Section 552.108(a)(3) is also inapplicable as the remaining information does not relate to a threat against a police officer. *See* Gov't Code § 552.108(a)(3). Finally, the department does not assert the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.*

§ 552.108(a)(4), (b)(3). Therefore, the department may not withhold any of the remaining information under section 552.108.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Upon review, we find the department has failed to demonstrate the applicability of section 552.1175 to any of the remaining information. Therefore, the department may not withhold any of the remaining information under section 552.1175.

Section 552.130 excepts from disclosure 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 id.* § 552.130. Upon review, with the exception of the video recording we have indicated for release, the remaining video recordings contain motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. In this instance, the department states it does not possess the technological capability to redact information from video files. Thus, we agree, with the exception of the video recording we have indicated for release, the department must withhold the remaining video recordings in their entireties under section 552.130 of the Government Code. *See Open Records Decision No. 364 (1983)*. Further, the department must withhold all audible motor vehicle record information in the submitted audio recordings under section 552.130 of the Government Code. However, none of the remaining information is confidential under section 552.130 of the Government Code and thus, none of it may be withheld on that basis.

In summary, as the requestor did not properly request the body worn camera recordings pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. With the exception of the video recording we have indicated for release, the department must withhold the remaining video recordings in their entireties under section 552.130 of the Government Code. The department must withhold all audible motor vehicle record information in the submitted audio recordings under section 552.130 of the Government Code. The remaining information must be released.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/tdw

Ref: ID# 677147

Enc. Submitted documents

c: Requestor
(w/o enclosures)