



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2017

Ms. Laura Anne Coats
Assistant District Attorney
County of Dallas
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2017-22905

Dear Ms. Coats:

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# 678959.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for several categories of information pertaining to a specified cause number. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requested information includes police officers' body worn camera video 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(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) for some of the recordings at issue. As the requestor did not properly request the body worn camera videos we have indicated 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). Further, we will consider your arguments against disclosure of the properly requested body worn camera video recordings.

Section 552.108 of the Government Code provides, in relevant part, as follows:

(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;

(4) it is information that:

(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;

(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

¹As we reach this determination, we need not address your arguments against disclosure of this information.

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

Gov't Code § 552.108(a)(1), (a)(4), (b)(1), (b)(3). A governmental body raising section 552.108 must explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You inform us the remaining information pertains to a criminal prosecution that resulted in a conviction. You generally state release of the remaining information “would interfere with the detection, investigation, or prosecution of a crime.” A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not inform us the information at issue pertains to a specific ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of subsection 552.108(a)(1) or subsection 552.108(b)(1).

Next, the district attorney's office seeks to withhold the entirety of the remaining information pursuant to the court's decision in *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). In *Curry*, the Texas Supreme Court held a request for a district attorney's “entire litigation file” was “too broad” and, quoting *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993), held “the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case.” *Curry*, 873 S.W.2d at 380 (internal quotations omitted) (quoting *National Union Fire Insurance Co.*, 863 S.W.2d at 460). However, a party is not prevented from requesting specific documents or categories of documents relevant to issues in a pending case, even though some or all of the documents may be contained in an attorney's files. *National Union*, 863 S.W.2d at 461. You claim the instant request for information seeks the district attorney's office's entire prosecution file for the remaining specified case. Upon review, we find the requestor seeks specific categories of information related to the specified case. Such a request does not constitute a request for the “entire” file. Thus, we conclude the present request is not a request for the district attorney's office's entire prosecution file. As a result, the district attorney's office may not withhold the remaining information under subsection 552.108(a)(4) or subsection 552.108(b)(3) of the Government Code and the holding in *Curry*.

You also argue Exhibits H, I, and M were created or assembled in anticipation of or in the course of preparing for criminal litigation and reflect the mental impressions and legal reasoning of prosecutors in the district attorney's office. Upon review, we find you have demonstrated the information at issue was prepared by an attorney representing the state in the course of preparing for criminal litigation. Accordingly, the district attorney's office may

withhold Exhibits H, I, and M under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code.²

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 chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter E-1 or subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find some of the information at issue consists of CHRI that is confidential under section 411.083. Accordingly, the district attorney’s office must withhold the information we have marked and Exhibit G under section 552.101 in conjunction with section 411.083 of the Government Code.³ However, we find you have failed to demonstrate the remaining information at issue consists of confidential CHRI. Therefore, the district attorney’s office may not withhold any portion of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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,

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

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information:

both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). We note the requestor has a right of access to information pertaining to her clients pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

Upon review, we find some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office must withhold the information we have marked and all public citizens' dates of birth, other than the dates of birth of the requestor's clients, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the district attorney's office may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

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. We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to her clients' motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the district attorney's office must withhold the information we have marked and the visible license plates in the remaining video recordings under section 552.130 of the Government Code; however, the motor vehicle record information related to the requestor's clients must be released to her.

In summary, the district attorney's office may withhold Exhibits H, I, and M under subsections 552.108(a)(4) and 552.108(b)(3) of the Government Code. The district attorney's office must withhold the information we have marked and Exhibit G under section 552.101 in conjunction with section 411.083 of the Government Code. The district attorney's office must withhold the information we have marked and all public citizens' dates of birth, other than the dates of birth of the requestor's clients, under section 552.101 of the

Government Code in conjunction with common-law privacy. The district attorney's office must withhold the information we have marked and all visible license plates in the remaining video recordings under section 552.130 of the Government Code; however, the motor vehicle record information related to the requestor's clients must be released to her. The district attorney's office must release the remaining information.⁴

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 678959

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴The requestor has a special right of access to some of the information being release in this instance. See Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the district attorney's office receives another requestor for this information from a different requestor, the district attorney's office must again seek a ruling from this office.