



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 26, 2017

Ms. Kristy Cole
City Secretary/Officer for Public Information
City of Rockwall
358 South Goliad Street
Rockwall, Texas 75087

OR2017-24440

Dear Ms. Cole:

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# 681526 (PD Report No. 2017-26731).

The Rockwall Police Department (the "department") received a request for information pertaining to a specified accident. You claim the submitted information is excepted 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.

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. This section encompasses information made confidential by other statutes. We note the submitted information contains recordings from department officers' body worn cameras. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code states the information a requestor must provide when seeking a body worn camera recording. *See* Occ. Code § 1701.661(a). Upon review, we find the requestor in this instance provided the requisite information. We understand the submitted recordings were required to be made by law or the policies of the department and the recording relates to a law enforcement purpose. *See id.* § 1701.661(h). Further, we understand the recordings are or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Additionally, we have no indication the recordings document incidents

that involve the use of deadly force by an officer or relates to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). However, section 1701.661(f) provides:

A law enforcement agency may not release any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

Id. § 1701.661(f). You state the department has not received written authorizations for release from all of the subjects of the recordings. Upon review, we are unable to determine whether the recordings at issue involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, we must rule conditionally. If the body worn camera recordings at issue involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then the submitted body worn camera recordings are confidential and must be withheld in their entireties under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, if the submitted body worn camera recordings do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, we will address the private space aspect of section 1701.661(f). As previously noted, section 1701.661(f) prohibits the release of body worn camera recordings made in a private space without proper authorization from the person who is the subject of that portion of the recording. *Id.* Upon review, we find a portion of one of the submitted video recordings was made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). You state the department does not have permission for release from the subject of the recording made in the private space at issue. *See id.* § 1701.661(f). Accordingly, we find the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. Nevertheless, to the extent the remaining recordings at issue do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, none of the remaining video recordings are confidential under section 1701.661(f), and it may not be withheld under section 552.101 on that basis. In that instance, we will address your remaining argument against disclosure of the remaining information.

Section 552.101 of the Government Code also 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. *See* 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. Transp. Code §§ 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).

The submitted information includes an accident report. In this instance, the requestor is a person listed under section 550.065(c). Although you assert 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 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 department may not withhold the information under section 552.108 of the Government Code. Thus, the department must release the accident report to this requestor pursuant to section 550.065(c) of the Transportation Code.

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 by the department. 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 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 basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, if the submitted body worn camera video recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the recordings at issue are confidential and must be withheld in their entireties under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the

Occupations Code. If the submitted body worn camera video recordings do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. With the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/tdw

Ref: ID# 681526

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the requestor has a right of access to the CR-3 accident report being released. *See* Transp. Code § 550.065(c)(4). Accordingly, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.