



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 4, 2017

Ms. Christina Z. Flores  
Counsel for the City of Alice  
Christina Z. Flores Attorney at Law  
1600 East Main Street, Suite 214  
Alice, Texas 78332

OR2017-27419

Dear Ms. Flores:

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# 686449.

The City of Alice (the "city"), which you represent, received a request for information pertaining to a specified case and personnel information pertaining to a named officer. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes city 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(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.<sup>1</sup> 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).

Next, we must address the city’s obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general’s decision and state the exceptions that apply within ten business days after the date of the receipt of the request. *See Gov’t Code* § 552.301(a),(b). You state the city received the request for information on September 11, 2017. Accordingly, the city’s ten-business-day deadline was September 25, 2017. However, the envelope in which the city sent its request for ruling under section 552.301(b) bears a postage meter mark of September 26, 2017. *See id.* § 552.308(a) (deadline under the Act is met if document is sent by first class United States mail with postage prepaid and bears post office mark indicating time within the deadline period). Consequently, we find the city failed to comply with the procedural requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See Open Records Decision No. 586 at 2-3 (1991)*. You state, and provide documentation showing, the 79th District Attorney’s Office (the “district attorney’s office”) asserts the information at issue should be withheld under section 552.108 of the Government Code. Therefore, we will consider whether the information at issue may be withheld under section 552.108 on behalf of the district attorney’s office.

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

Section 552.108(a) 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: (1) 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 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). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you inform this office, and submit documentation demonstrating, the district attorney’s office objects to release of the information at issue because release would interfere with a pending criminal investigation and prosecution. Based upon your representation and our review, we conclude release of the remaining information 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, we conclude section 552.108(a)(1) of the Government Code is applicable to the information at issue.

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). Section 552.108(c) refers to the basic 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 to be basic information). We note basic information includes the arrestee’s social security number and home address, but does not include dates of birth. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

We note some of the basic information may be excepted from disclosure under section 552.1175 of the Government Code.<sup>2</sup> This section 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* Gov’t Code § 552.1175. Section 552.1175 applies to peace

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

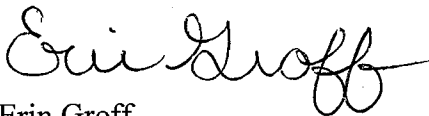
officers as defined by Article 2.12 of the Code of Criminal Procedure. *Id.* § 552.1175(a)(1). Some of the basic information pertains to an individual who is subject to section 552.1175. Thus, the city must withhold the information we have marked under section 552.1175 if the individual at issue elects to restrict access to this information in accordance with section 552.1175(b). However, if the individual at issue does not elect to restrict access to this information in accordance with section 552.1175(b), then the city may not withhold this information under section 552.1175.

In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information, and the city need not release it in response to this request for information. With the exception of basic information, which must be released, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. In releasing the basic information, the city must withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code.<sup>3</sup>

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](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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/sb

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<sup>3</sup>Further, although basic information includes an arrestee's social security number, regardless of the applicability of section 552.1175, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

Ref: ID# 686449

Enc. Submitted documents

c: Requestor  
(w/o enclosures)