



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2018

Mr. Matthew Murray
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102-6311

OR2018-01061

Dear Mr. Murray:

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# 691786 (ORR W066186).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. You state some information has been released to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the submitted information includes a police officer's 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 provide 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 of the Occupations Code, our ruling does not reach these recordings and the city is not required to release them.¹ 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 some of the remaining information is subject to article 2.1396 of the Code of Criminal Procedure, which provides,

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or
- (4) a procedure in which a specimen of the person’s breath or blood is taken.

Crim Proc. Code art 2.1396. The remaining information includes a video recording made by or at the direction of an officer employed by the city’s police department and contains footage of the conduct of the requestor’s client during an interaction with the officer after being arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 (person commits offense if person is intoxicated while operating motor vehicle in public place). Thus, the requestor is entitled to receive a copy of the video recording at issue pursuant to article 2.1396 of the Code of Criminal Procedure. Although you seek to withhold the recording under section 552.108 of the Government Code, a statutory right of

¹As our ruling is dispositive, we do not address the argument of the city to withhold this information.

access prevails over the Act's general exceptions to public disclosure. *See* 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 right of access under article 2.1396 prevails. Therefore, the city may not withhold any portion of the remaining video recording that depicts the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the requestor's client's blood or breath is taken under section 552.108 of the Government Code. Accordingly, the requestor is entitled to receive a copy of the submitted video recording we indicated pursuant to article 2.1396 of the Code of Criminal Procedure, and the city must release it to this requestor.

Further, we note the submitted information contains a CR-3 accident report that is 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. 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. *Id.* §§ 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).

In this instance, the requestor is the authorized representative of a person listed under section 550.065(c). As noted above, although the city asserts 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.*, ORDs 613 at 4, 451. Because section 552.108 is a general exception under the Act, the requestor's statutory access under section 550.065(c) prevails and the city may not withhold the information at issue under section 552.108 of the Government Code. Accordingly, the city must release the CR-3 accident report we marked pursuant to section 550.065(c) of the Transportation Code.

The remaining information contains court-filed documents that are subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) requires disclosure of "information that is also contained in a public court record[.]" unless the information is confidential under the Act or other law. Gov't Code § 552.022(a)(17). Although the city asserts the information subject to section 552.022(a)(17), which we have marked, is excepted from disclosure under section 552.108, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore,

the city may not withhold the information subject to section 552.022(a)(17) under section 552.108 of the Government Code.

The city asserts the remaining information is excepted from disclosure under section 552.108(a)(1) of the Government Code, which 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). We note the remaining information includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. Because copies of these forms were provided to the arrestee, we find their release will not interfere with the detection, investigation, or prosecution of crime. Therefore, the city may not withhold the marked DIC-24 Statutory Warning or DIC-25 Notice of Suspension under section 552.108(a)(1). The city states the remaining information relates to a current criminal investigation by the city’s police department. Based on your representation, we find 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).

However, 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 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the DIC-24 Statutory Warning, the DIC-25 Notice of Suspension, and basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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 the submitted body camera recordings in response to this request for information. The city must release the video recording we indicated under article 2.1396 of the Code of Criminal Procedure. The city must release the CR-3 accident report we marked pursuant to section 550.065(c) of the Transportation Code. The city must release the court-filed documents we marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of the DIC-24 Statutory Warning, the DIC-25 Notice of Suspension, and basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,



James M. Graham
Attorney
Open Records Division

JMG/eb

Ref: ID# 691786

Enc. Submitted documents

c: Requestor
(w/o enclosures)