



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 22, 2019

Ms. Kristie L. Lewis  
Staff Attorney  
Houston Police Department  
1200 Travis, 21<sup>st</sup> Floor  
Houston, Texas 77002-6000

OR2019-01766

Dear Ms. Lewis:

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# 746994 (ORU No. 18-10814).

The Houston Police Department (the "department") received a request for information related to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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

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<sup>1</sup>We 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.

Code § 552.101. Section 552.101 encompasses section 1701.660 of the Occupations Code, which provides, in relevant part:

(a) Except as provided by Subsection (b), a recording created with a body worn camera and documenting an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer may not be deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded.

Occ. Code § 1701.660(a). You state the recording at issue relates to an open and active administrative investigation of an officer. *See id.* § 1701.660(a). Further, we understand the department does not seek to exercise its discretion to release the body worn camera recording at issue pursuant to section 1701.660(b) of the Occupations Code. *See id.* § 1701.660(b) (law enforcement agency may release to the public a recording described by Subsection (a) if the law enforcement agency determines that the release furthers a law enforcement purpose). Accordingly, the department must withhold the body worn camera recording under section 552.101 of the Government Code in conjunction with section 1701.660(a) of the Occupations Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses information protected by other statutes. The City of Houston is a civil service city under chapter 143 of the Local Government Code. Section 143.1214 of the Local Government Code provides in relevant part:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

- (1) to another law enforcement agency or fire department;
- (2) to the office of a district or United States attorney; or
- (3) in accordance with Subsection (c).

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<sup>2</sup>As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

(c) The department head or the department head's designee may forward a document that relates to disciplinary action against a fire fighter or police officer to the director or the director's designee for inclusion in the fire fighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) only if:

- (1) disciplinary action was actually taken against the fire fighter or police officer;
- (2) the document shows the disciplinary action taken; and
- (3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

Local Gov't Code § 143.1214(b)-(c). You state the remaining information is maintained in the department's internal investigative files and relates to an open investigation by the department's Internal Affairs Division of alleged misconduct by a police officer. You further state the requestor is not a representative from another law enforcement agency, a fire department, or the office of a district or United States attorney. *See id.* § 143.1214(b)(1)-(2). Thus, based on your representations and our review, we conclude the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. However, we find the remaining information consists of scene photographs and the accident report from the accident at issue, which are maintained independently from the police officer's internal file. In this instance, the requestor has specifically requested this information, which is maintained for law enforcement purposes separate and apart from any internal files. The department may not engraft the confidentiality afforded to records under section 143.1214 to records that exist independently of the internal files. Accordingly, the remaining information is not confidential under section 143.1214 of the Local Government Code, and the department may not withhold it under section 552.101 of the Government Code on that basis.

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. *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 represents a person involved in the crash. *See id.* § 550.065(c)(4)(B). Therefore, the department must release the CR-3 accident report to the requestor pursuant to section 550.065(c) of the Transportation Code.

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.<sup>3</sup> *See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to motor vehicle record information pertaining to the requestor's clients and this information may not be withheld from this requestor under section 552.130 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the department must withhold the discernible license plates and vehicle identification numbers that do not belong to the requestor's clients in the scene photographs under section 552.130 of the Government Code.

In summary, the department must withhold the body worn camera recording under section 552.101 of the Government Code in conjunction with section 1701.660(a) of the Occupations Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. The department must withhold the discernible license plates and vehicle identification numbers that do not belong to the requestor's clients in the scene photographs under section 552.130 of the Government Code. The department must release the remaining information.<sup>4</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/>

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<sup>3</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).

<sup>4</sup>We note the requestor has a right of access to some of the information being released. *See* Transp. Code § 550.065(c)(4); Gov't Code § 552.023; *see also* ORD 481 at 4. Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

[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,

A handwritten signature in black ink, appearing to read "Emily Buchanan". The signature is fluid and cursive, with the first letter "E" being particularly large and stylized.

Emily Buchanan  
Attorney  
Open Records Division

EB/mo

Ref: ID# 746994

Enc. Submitted documents

c: Requestor  
(w/o enclosures)