



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 22, 2019

Ms. Laura Anne Coats  
Assistant District Attorney  
Dallas County  
Frank Crowley Criminal Courts Building  
133 North Riverfront Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2019-05113

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# 751366.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for twenty-eight categories of information pertaining to a specified accident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the submitted information includes department police officers' body worn camera recordings. Chapter 1701 of the Occupations Code provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

---

<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.

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). The district attorney's office asserts the requestor does not give the requisite information under section 1701.661(a). Therefore, the district attorney's office argues the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701. However, we find the instant request includes the information required by section 1701.661(a). *Id.* Accordingly, we find the requestor properly requested the body worn camera recordings at issue and we will address the district attorney's office's arguments against their disclosure.

Next, we note the remaining information contains a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The district attorney's office seeks to withhold the information subject to section 552.022(a)(17) under sections 552.103, 552.108, and 552.130 of the Government Code. However, sections 552.103 and 552.108 are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Accordingly, the district attorney's office may not withhold the court-filed document subject to section 552.022, which we marked, under sections 552.103 or 552.108 of the Government Code. However, section 552.130 of the Government Code makes information confidential under the Act. Accordingly, we will consider the applicability of this exception to the information subject to section 552.022(a)(17). Additionally, we will address your arguments against disclosure for the information not subject to section 552.022(a)(17) of the Government Code.

Section 552.108 of the Government Code provides in part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(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:

...

(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

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

Gov't Code § 552.108(a)(4), (b)(3). A governmental body raising section 552.108 must explain the applicability of that section. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You argue the information at issue is subject to sections 552.108(a)(4) and 552.108(b)(3) of the Government Code in conjunction with *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). In *Curry*, the Texas Supreme Court held that 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). You contend the instant request for information seeks the district attorney's office's entire prosecution file for the case at issue. However, we disagree the requestor seeks the entire prosecution file. Rather, the requestor seeks specific information held by the district attorney's office. Such a request does not constitute a request for the "entire" file. Thus, we conclude the present request is not a request for the entire prosecution file of the district attorney's office. As a result, the district attorney's office may not withhold the remaining information not subject to section 552.022

of the Government Code under section 552.108(a)(4) or section 552.108(b)(3) of the Government Code and the holding in *Curry*.

You also argue the remaining information is excepted from disclosure under section 552.108(a)(1) of the Government Code. A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information pertains to a pending criminal prosecution and that release of this information would interfere with the pending prosecution. Therefore, based upon your representations and our review, we conclude the 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 77 (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. 976). Thus, section 552.108(a)(1) of the Government Code is applicable to the remaining information at issue.

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). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*. See 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); see also Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information may not be withheld from public disclosure under section 552.103. See Open Records Decision No. 597 at 2-3 (1991). Thus, with the exception of basic information, which must be released, the district attorney's office may withhold the information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code.<sup>2</sup>

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. Accordingly, the district attorney's office must withhold the motor vehicle record information we marked in the information subject to section 552.022 under section 552.130 of the Government Code.

In summary, with the exception of basic information and the information subject to section 552.022(a)(17) of the Government Code, which must be released, the district attorney's office may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing the information subject to section 552.022(a)(17) of the

---

<sup>2</sup>As our ruling is dispositive, we need not address the district attorney's office's remaining arguments against disclosure of this information.

Government Code, the district attorney's office must withhold the motor vehicle record information we marked under section 552.130 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](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,



Lecelle Clarke  
Attorney  
Open Records Division

LC/eb

Ref: ID# 751366

Enc. Submitted documents

c: Requestor  
(w/o enclosures)