



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2019

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar, 6Floor, 6W
Dallas, Texas 75215

OR2019-10508

Dear Ms. McClellan:

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# 760224 (DPD Req. Nos. D001715-011719, D001875-011819, and D002272-012219).

The Dallas Police Department (the "department") received a request for information pertaining to six specified incidents, including case number 000116-2019. The department received two additional requests from different requestors for information pertaining to case number 000116-2019. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted representative sample of information.

Initially, we note the submitted information includes department 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 provides, in relevant part, the following:

(a) 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 first and third requestors do not provide the requisite information under section 1701.661(a) for any of the submitted body worn camera recordings. The second requestor does not provide the requisite information under section 1701.661(a) for some of the submitted body worn camera recordings, which we have indicated. As these body worn camera recordings were not properly requested pursuant to chapter 1701, our ruling does not reach this information and it need not be released.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). Nevertheless, the second requestor provides the requisite information for the remaining body worn camera recordings. Thus, we will address the department’s argument against the disclosure of this information.

Next, we note the department has only submitted information responsive to portions of the first request. Further, the department does not inform us it has released this information. Although the department states it has submitted a representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the types of information it submitted to this office. *See* Gov’t Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov’t Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the remainder of the first request existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov’t Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

¹As we are able to make this determination, we need not address the department’s argument against disclosure of this information.

Next, the department states most of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-03376 (2019). In that ruling, we determined with the exception of the basic information, which must be released, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the department may rely on Open Records Letter No. 2019-03376 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the instant request is not identical to the information ruled upon by this office in Open Records Letter No. 2019-03376, we will address the department's argument against its disclosure.

Next, we note, and the department acknowledges, the department has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). 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 (1991). Because the department informs us, and provides documentation showing, the Dallas County District Attorney's Office (the "district attorney's office") objects to the release of some of the information at issue, we will consider whether the department may withhold the information at issue under section 552.108 of the Government Code on behalf of the district attorney's office.

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). Generally, 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). The department does not inform us the information relating to incident number 19-0004535 and case number 268665-2018/268651-2018 pertain to ongoing criminal investigations or prosecutions, nor has the department explained release of this information would interfere with the detection, investigation, or prosecution of crime. Thus the department has failed to demonstrate the applicability of section 552.108(a)(1) to the information relating to incident number 19-0004535 and case number 268665-2018/268651-2018, and the department may not withhold it on this basis. However, the department states, and provides a statement demonstrating, the district attorney's office has advised the department the information pertaining to case number 000116-2019 is related to a pending criminal prosecution. The district attorney's office states it objects to disclosure of this information because its release would interfere with the prosecution. Based on these representations and our review, 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, we conclude section 552.108(a)(1) is applicable to the information pertaining to case number 000116-2019.

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 the basic information, the department may withhold the information pertaining to case number 000116-2019 under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open

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

Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

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. Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

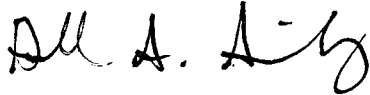
In summary, pursuant to section 1701.661 of the Occupations Code, our ruling does not reach the body worn camera recordings that were not properly requested and they need not be released. To the extent the submitted information is identical to the information previously requested and ruled upon by this office, the department may rely on Open Records Letter No. 2019-03376 as a previous determination and withhold or release the identical information in accordance with that ruling. With the exception of the basic information, the department may withhold the information pertaining to case number 000116-2019 under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. The department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The department must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/gw

Ref: ID# 760224

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)