



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 24, 2019

Ms. Julie Pandya Doshier  
Counsel for the Aubrey Police Department  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
1800 Ross Tower  
500 North Akard Street  
Dallas, Texas 75201

OR2019-10885

Dear Ms. Doshier:

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# 761558 (Ref. Nos. 106196 and 106234).

The Aubrey Police Department (the "department"), which you represent, received two requests from different requestors for information pertaining to a specified incident. You state the department does not possess information responsive to a portion of the second request.<sup>1</sup> You state the department has released some information. The department will redact motor vehicle record information not belonging to each requestor's client pursuant to section 552.130(c) of the Government Code.<sup>2</sup> The department will also redact dates of birth pursuant to Open Records Letter No. 2018-03218 (2018).<sup>3</sup> You claim some of the submitted

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>3</sup>Open Records Letter No. 2018-03218 is a previous determination issued to the City of Aubrey authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code).

information was not properly requested pursuant to section 1701.661 of the Occupations Code. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

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 Code § 552.101. This section encompasses information made confidential by other statutes. You assert a portion of the submitted information, which consists of a camera recording from a department vehicle, was not properly requested under section 1701.661 of the Occupations Code. *See* Occ. Code § 1701.661. However, 1701.661 applies to a police officer’s body worn camera recording. *See id.* § 1701.651(1)(B) (“‘Body worn camera’ means a recording device that is . . . worn on the person of a peace officer[.]”). Accordingly, we conclude the information at issue is not subject to section 1701.661 of the Occupations Code, and the department may not withhold any portion of it under section 552.101 of the Government Code on that basis.

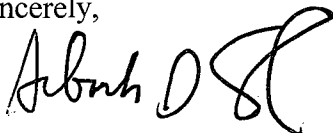
Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution 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). You state the information you marked pertains to a pending criminal prosecution, and release of the information at issue would interfere with the prosecution of the case. Based on this representation, 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). Therefore, the department may withhold the information you marked under section 552.108(a)(1) 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](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 "Deborah D S", written in a cursive style.

Deborah Southerland  
Attorney  
Open Records Division

DS/gw

Ref: ID# 761558

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)