



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 2, 2019

Ms. Sara Casares
Office Specialist
Edinburg Police Department
1702 South Closner Boulevard
Edinburg, Texas 78539

OR2019-11700

Dear Ms. Casares:

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# 763181 (Ref. Nos. 123630 and 123824).

The Edinburg Police Department (the "department") received two requests from different requestors for information related to a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.1085, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some 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. 2019-04971 (2019). In that ruling, we determined the department: (1) need not release the submitted body worn camera recordings because they were not properly requested pursuant to chapter 1701 of the Occupations Code; (2) may withhold some information under section 552.108(a)(1) of the Government Code; (3) must withhold the public citizens' dates of birth, with the exception of the information subject to section 552.022(a)(17) of the Government Code, under section 552.101 of the Government Code in conjunction with common-law privacy; (4) must withhold the certain information under section 552.130 of the Government Code; and (5) must release the remaining information. However, in the instant request, the second requestor properly requests the body worn camera recordings at issue. *See* Occ. Code § 1701.661(a). Therefore, the facts and circumstances have changed with respect to the body

worn camera recordings at issue. Thus, the department may not rely on Open Records Letter No. 2019-04971 with respect to this information. *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, we have no indication the law, facts, or circumstances on which the previous ruling was based have changed with respect to the remaining information at issue in Open Records Letter No. 2019-04971. Accordingly, for the remaining information previously requested and ruled upon by this office, we conclude the department must rely on Open Records Letter No. 2019-04971 as a previous determination and withhold or release the information previously at issue in accordance with that ruling.¹ However, we will address your arguments against disclosure of the submitted body worn camera recordings, as well as the information not subject to the previous ruling.

Next, we note the remaining information includes court-filed documents. 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). Although you seek to withhold the court-filed documents under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See* 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 section 552.108 subject to waiver). Therefore, the department may not withhold the court-filed documents, which we have marked, under section 552.108 of the Government Code. Furthermore, although you seek to withhold a portion of this information under section 552.101 in conjunction with common-law privacy, we note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the marked court-filed documents may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, because section 552.130 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to the court-filed documents subject to section 552.022(a)(17). Further, we will address your arguments against disclosure of the remaining 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 the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the

¹As we are able to make this determination, we need not address your arguments against disclosure of this information.

common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). Nevertheless, because “the right of privacy is purely personal[,]” that right “terminates upon the death of the person whose privacy is invaded[.]” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broad. Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting Restatement (Second) of Torts § 6521 (1977))); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Accordingly, with the exception of the information subject to section 552.022(a)(17) of the Government Code and the dates of birth pertaining to deceased individuals, the department must withhold the public citizens' dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

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). You state the submitted information relates to a pending criminal investigation or prosecution. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *See Houston Chronicle Publ'g Co. v. City of Houston*, 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) (court delineates law enforcement interests that are present in active cases). We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The Statutory Warning and Notice of Suspension have previously been provided to the arrestee. Because copies of these documents have previously been released to the arrestee, we find the department has not shown release of the documents will interfere with the detection, investigation, or prosecution of crime, and these documents may not be withheld under section 552.108(a)(1). *See* Gov't Code § 552.108(a)(1). Because the remaining information at issue has not been previously released, we conclude release of

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is applicable to the remaining information at issue.

Additionally, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187. *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). We note basic information includes, among other items, a sufficient portion of the narrative to include a detailed description of an offense. Accordingly, with the exception of the DIC-24 and DIC-25 forms, the information subject to section 552.022(a)(17) of the Government Code, and basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.³

Section 552.1085 of the Government Code provides, in pertinent part, the following:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov’t Code § 552.1085(c). For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person’s genitalia.” *See id.* § 552.1085(a)(6). Upon review, we find the photographs at issue do not consist of sensitive crime scene images for purposes of section 552.1085 of the Government Code. Accordingly, the department may not withhold any of the remaining information under section 552.1085(c) of the Government 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. *See id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information you have marked and the additional information we have marked under section 552.130 of the Government Code.

In summary, with the exception of the submitted body worn camera recordings, the department must rely on Open Records Letter No. 2019-04971 as a previous determination

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

and withhold or release the information previously at issue in accordance with that ruling. With the exception of the information subject to section 552.022(a)(17) of the Government Code and the dates of birth pertaining to deceased individuals, the department must withhold the public citizens' dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the DIC-24 and DIC-25 forms, the information subject to section 552.022(a)(17) of the Government Code, and basic information, the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The department must withhold the motor vehicle record information you have marked and the additional information we have marked 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 763181

Enc. Submitted documents

c: Requestors
(w/o enclosures)

Third Party
(w/o enclosures)