



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

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Ms. Alicia K. Kreh
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OR2019-19908

Dear Ms. Kreh:

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# 776330.

The Flower Mound Police Department (the "department"), which you represent, received two requests for information from the same requestor pertaining to two named individuals. We understand you have released some information to the requestor. You claim some of the submitted information was not properly requested under chapter 1701 of the Occupations Code. You also claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information includes police 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(a) provides:

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 requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (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).

Next, you state you will redact certain information pertaining to the named individuals under section 552.130 of the Government Code and section 552.147 of the Government Code.¹ However, the requestor is an authorized representative of the named individuals. Section 552.023(a) of the Government Code provides a governmental body may not deny access to a person or a person’s representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. *See* Gov’t Code § 552.023(a) (“person or a person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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 herself). Sections 552.130 and 52.147 of the Government Code protect personal privacy. Thus, the requestor has a right of the access to the information at issue under section 552.023 of the Government Code, and the department may not withhold information pertaining to the named individuals under section 552.130 of the Government Code or section 552.147 of the Government Code.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1, of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We note, however, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for purposes of section 552.101. *See id.* § 411.081(b). We further note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. Upon review, we find some of the submitted information consists of CHRI that is generally confidential under section 411.083. However, the remaining information does not contain CHRI for purposes of chapter 411. Accordingly, the remaining information is not confidential under chapter 411, and the department may not withhold it under section 552.101 of the Government Code on that ground.

Nevertheless, we note the requestor states she is conducting a court-ordered child custody evaluation involving the named individuals. Section 411.1285(a-1) of the Government Code provides the following:

(a-1) [A] domestic relations office created under Chapter 203, Family Code, or a child custody evaluator appointed under Chapter 107, Family Code, is entitled to obtain from the [Texas Department of Public Safety ("DPS")] criminal history record information [{"CHRI"}] that relates to a person involved in a child custody evaluation under Chapter 107, Family Code, in which the domestic relations office or child custody evaluator has been appointed to conduct the child custody evaluation.

Gov't Code § 411.1285(a-1)); *see* Fam. Code chs. 107 (governing child custody evaluations), 203 (governing administration of domestic relations offices). Additionally, section 411.087(a)(2) of the Government Code reads as follows:

(a) [A] person, agency, department, political subdivision, or other entity that is authorized by this subchapter or Subchapter E-1 to obtain from the [DPS CHRI] maintained by [DPS] that relates to another person is authorized to:

...

(2) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to that person.

Gov't Code § 411.087(a)(2). CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Thus, a child custody evaluator appointed under Chapter 107 of the Family Code may only receive CHRI if the information relates to a person involved in a child custody evaluation under chapter 107 of the Family Code in which the child custody evaluator has been appointed to conduct the child custody evaluation. *See id.* § 411.1285(a-1)); *see also* Open Records Decision No. 655 (1997) (discussing limitations on release of CHRI). As noted above, the requestor states she has been appointed by the Dallas County District Courts to conduct a court-ordered child custody evaluation of the named individuals pursuant to chapter 107 of the Family Code. Thus, the requestor has a right of access to the submitted CHRI pursuant to sections 411.087(a)(2) and 411.1285(a-1) of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act. Section 418.182 provides in part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the surveillance cameras at issue are part of the Town of Flower Mound Jail's (the "jail") security system, and the submitted surveillance camera recording reveals the specifications, layout, design, and capabilities of the surveillance cameras. You further state the surveillance cameras at issue are used to protect the inmates and jail staff from terrorists and criminal activities. Based on your representations and our review, we conclude the submitted surveillance camera recordings are related to the specifications, operating procedures, or location of a security system used to protect public property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (recorded images necessarily relate to specifications of security system that recorded them, and thus, are confidential under section 418.182).

Accordingly, the department must withhold the submitted surveillance camera recordings under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.

In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The department must withhold the submitted surveillance camera recordings under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The department must release the remaining information.²

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/jxd

Ref: ID# 776330

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.