



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 6, 2019

Ms. Catherine Zellers  
City Attorney's Office  
City of Weatherford  
P.O. Box 255  
Weatherford, Texas 76086

OR2019-21648

Dear Ms. Zellers:

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# 779030 (Records Center No. W001420).

The Weatherford Police Department (the "department") received a request for all information related to a specified incident.<sup>1</sup> You state you have released some information to the requestor. You state you will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code and dates of birth pursuant to the previous determination issued in Open Records Letter No. 2018-01572 (2018).<sup>2</sup> You state you do not have information responsive to a portion of the request.<sup>3</sup> You claim some of the submitted

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<sup>1</sup>The department sought clarification of the information requested and received a response. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

<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). Open Records Letter No. 2018-01572 is a previous determination issued to the City of Weatherford 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 requesting a decision from this office.

<sup>3</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the city. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision No. 452 at 3 (1986).

information was not properly requested pursuant to section 1701.661 of the Occupations Code. You claim some of the submitted information is excepted from disclosure under sections 552.108 and 552.1175 of the Government Code.<sup>4</sup> We have considered the submitted arguments and reviewed the submitted 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(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 provide the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue, 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).

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 it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). We have marked the documents that are subject to section 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the court-filed documents may not be withheld under section 552.108. As you raise no further exceptions to disclosure of this information, it must be released. However, we will address the applicability of section 552.108 to the remaining information at issue not subject to section 552.022.

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<sup>4</sup>Although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise for information not held in an employment context.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to “federal judges and state judges as defined by section 13.0021, Election Code[.]” *Id.* § 552.1175(a)(13). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 a 5-6 (1988). Accordingly, to the extent the information at issue, which you marked, consists of the personal telephone numbers of individuals who are subject to section 552.1175(a) and who elect to restrict access to the information in accordance with section 552.1175(b), the department must withhold the information under section 552.1175 of the Government Code; however, to the extent the telephone numbers are cellular telephone numbers, they may only be withheld if a governmental body does not pay for the cellular telephone service. Conversely, if the individuals whose information is at issue are not individuals who are subject to section 552.1175(a) or do not elect to restrict access to their information in accordance with section 552.1175(b) this information may not be withheld under section 552.1175. In addition, we conclude section 552.1175 of the Government Code is not applicable to the remaining information, which we marked for release, and the department may not withhold it on that ground.

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 remaining information at issue pertains to a pending criminal 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. *See* Gov't Code § 552.108(a)(1). Upon review, we conclude release of the remaining information you seek to withhold would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) of the Government Code is applicable to the remaining information at issue.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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). Accordingly, with the exception of basic information, which you have released, and the DIC-24 and DIC-25 forms, the department may withhold the remaining information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) 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. To the extent the individuals whose information is at issue are encompassed by section 552.1175(a) of the Government Code, and they elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, with the exception of the information we marked for release, the department must withhold the information you marked under section 552.1175 of the Government Code; however, any cellular telephone numbers may only be withheld under section 552.1175 if a governmental body does not pay for the cellular service. With the exception of the DIC-24 and DIC-25 forms, the court-filed documents subject to section 552.022(a)(17), and basic information, the department may withhold the remaining information at issue under section 552.108(a)(1) 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,



Kimbell Kesling  
Attorney  
Open Records Division

KK/eb

Ref: ID# 779030

Enc. Submitted documents

c: Requestor  
(w/o enclosures)