



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 28, 2019

Mr. Whitt L. Wyatt  
Counsel for the City of Allen  
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Dallas, Texas 75201

OR2019-24060

Dear Mr. Whitt:

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# 782882 (Ref. Nos. 108860, 109055).

The Allen Police Department (the "department"), which you represent, received two requests from different requestors for information pertaining to a specified case. You state the department has released some of the requested information with redactions under section 552.130(c) of the Government Code and pursuant to the previous determination issued in Open Records Letter No. 2018-11817 (2018).<sup>1</sup> You claim some of the requested information was not properly requested under chapter 1701 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you state the information requested by the second requestor 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:

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<sup>1</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. 2018-11817 is a previous determination issued to the City of Allen 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).

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 second requestor does not give the requisite information under section 1701.661(a). As the second requestor did not properly request the body worn camera recordings 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).

You inform our office that you released some of the requested information at issue. You now seek to withhold portions of this information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. Section 552.007 of the Government Code provides that, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov’t Code § 552.007; Open Records Decision Nos. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential under law). Accordingly, pursuant to section 552.007, the department may not now withhold any previously released information unless it is expressly prohibited by the Act or the information is confidential under law. Although you now raise the common-law informer’s privilege for some of the information at issue, this exception is a discretionary exception to disclosure which may be waived, and the department may not now withhold the information at issue on this basis. *See* Open Records Decision Nos. 549 at 6 (1990) (governmental body may waive common-law informer’s privilege), 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the department may not now withhold any of the previously released information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the submitted information pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue.

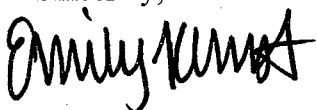
However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which you state you have released, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code.<sup>2</sup>

In summary, the body worn camera recordings sought by the second requestor were not properly requested pursuant to chapter 1701 of the Occupations Code and need not be released to the second requestor. With the exception of basic information, which you state you have released, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code.<sup>3</sup>

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/jxd

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure.

<sup>3</sup> We note the requestors have a right of access to some of the information being released. *See* Gov’t Code § 552.023(b)(a governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); 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.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)