



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 11, 2019

Ms. Nicole Sooter
Executive Assistant / Custodian of Records
Lakeway Police Department
1941 Lohman's Crossing
Lakeway, Texas 78734-5269

OR2019-25505

Dear Ms. Sooter:

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# 785103.

The Lakeway Police Department (the "department") received a request for information pertaining to a specified incident.¹ The department states it has released some information to the requestor, including the accident report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). The department claims some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we note the submitted information includes law enforcement 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 provides, in relevant part, the following:

¹ We note the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

(a) 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 body worn camera recordings at issue were not properly requested 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 [s]ubsection (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).

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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The department states the information at issue relates to a pending criminal investigation or prosecution. Based upon the department’s representation and our review, we conclude release of the information at issue will 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). Accordingly, we find the department may withhold the remaining information in Exhibit C under section 552.108(a)(1) of the Government Code.²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”³ Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the

² Although section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime, *see* Gov’t Code § 552.108(c), the department states it has previously released basic information to the requestor.

³ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). We note, however, the requestor is the insurance provider for one of the individuals listed in the information at issue. As such, if the requestor is acting as the individual's authorized representative, she has a right of access to the insured's date of birth. *See id.* § 552.023(a) (“[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the 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 an individual or authorized representative asks governmental body to provide information concerning that individual). Therefore, to the extent the requestor is acting as the insured's authorized representative, the department must release to the requestor the date of birth pertaining to the insured, but withhold the remaining dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the requestor is not acting as the insured's authorized representative, the department must withhold all the public citizens' dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 Gov't Code* § 552.130. As previously noted, the requestor is the insurance provider for one of the individuals listed in the information at issue. As such, if the requestor is acting as the individual's authorized representative, she has a right of access to the insured's motor vehicle record information. *See id.* § 552.023(a); ORD 481 at 4. Therefore, to the extent the requestor is acting as the insured's authorized representative, the department must release to the requestor the information pertaining to the insured, but withhold the remaining information we have marked under section 552.130 of the Government Code. To the extent the requestor is not acting as the insured's authorized representative, the department must withhold all of the motor vehicle record information we have marked under section 552.130 of the Government Code.

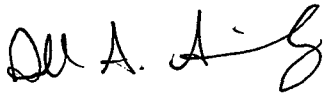
In summary, pursuant to section 1701.661 of the Occupations Code, our ruling does not reach the body worn camera recordings at issue and they need not be released. The department may withhold the remaining information in Exhibit C under section 552.108(a)(1) of the Government Code. To the extent the requestor is acting as the insured's authorized representative, the department must release to the requestor the information pertaining to the insured, but must withhold the remaining dates of birth we have marked under section 552.101 of the Government Code in conjunction with common law privacy and the remaining motor vehicle information we have marked under section 552.130 of the Government Code. To the extent the requestor is not acting as the insured's

authorized representative, the department must withhold all public citizens' dates of birth we have marked under section 552.101 of the Government Code in conjunction with common law privacy and all of the motor vehicle record information we have marked under section 552.130 of the Government Code. In either instance, 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 <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,

A handwritten signature in black ink, appearing to read "Gerald Arismendez". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/gw

Ref: ID# 785103

Enc. Submitted documents

c: Requestor
(w/o enclosures)