



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2019

Mr. William Brooks
Counsel for the City of Buda
Russell Rodriguez Hyde Bullock LLP
1633 Williams Drive, Building 2, Suite 200
Georgetown, Texas 78628

OR2019-25668

Dear Mr. Brooks:

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# 785631 (City ID Nos. BU-2019-035 and BU-2019-038).

The Buda Police Department (the "department"), which you represent, received two requests from different requestors for information related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a department officer's body worn camera recording. 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 the following:

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, neither requestor gives the requisite information under section 1701.661(a). As the requestors did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information and the department is not required to release it.¹ 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).

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in a conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). Sections 552.108(a)(2) and (b)(2) protect information relating to a concluded criminal investigation that did not result in a conviction or deferred adjudication. A governmental body that raises section 552.108 must explain how and why section 552.108 is applicable to that information. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108 generally is not applicable to purely administrative records that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records

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

Decision No. 562 at 10 (1990); *see also* Open Records Decision No. 350 at 3-4 (1982). You represent the remaining information relates to a closed criminal investigation by the department that did not result in conviction or deferred adjudication. Upon review, we find most of the remaining information is subject to section 552.108(a)(2) of the Government Code. We note, pursuant to the court's decision in *City of Carrollton v. Paxton*, 490 S.W.3d 187 (Tex. App.—Austin 2016, pet. denied), and your briefing, section 552.108(c) of the Government Code is not applicable in this instance. Accordingly, with the exception of the information we have marked for release, the department may the remaining information under section 552.108(a)(2) of the Government Code.² However, we note the information we have marked for release pertains to an open records request, and is not information that deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(2) or section 552.108(b)(2) to the information we have marked for release and the department may not withhold this information on those bases.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address you have marked in the remaining information is not excluded by subsection (c). Upon review, we find the department must withhold the e-mail address you have marked in the remaining information under section 552.137 of the Government Code, unless its owner affirmatively consents to its public disclosure.

In summary, because the requestors did not properly request the submitted body worn camera recording pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and the department is not required to release it. With the exception of the information we have marked for release, the department may withhold the remaining information under section 552.108(a)(2) of the Government Code. The department must withhold the e-mail address you have marked in the remaining information under section 552.137 of the Government Code, unless its owner affirmatively consents to its public disclosure. 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

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

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 "Tim Neal". The signature is stylized with a large initial "T" and a cursive "Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/gw

Ref: ID# 785631

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)