



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 5, 2019

Deputy Danie Huffman  
Public Information Officer  
Parker County Sheriff's Office  
129 Hogle Street  
Weatherford, Texas 76086

OR2019-34296

Dear Deputy Huffman:

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# 800209 (ORR 19-1016).

The Parker County Sheriff's Office (the "sheriff's office") received a request for all reports for a specified address during a specified period of time.<sup>1</sup> You claim some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. You 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.

The submitted information includes body worn camera video 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> The sheriff's office states it 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); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 video recordings pursuant to chapter 1701, our ruling does not reach this information and it need not be released.<sup>2</sup> 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 video recording is a dashboard camera recording, not a body worn camera recording, and therefore not subject to section 1701.661. Accordingly, the dashboard recording is subject to the Act and we will address your arguments against its disclosure.

Next, you state report 2019-02244 was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-25174 (2019). We note, however, the requestor in Open Records Letter No. 2019-25174 had a right of access to some of the information at issue. The requestor, in this instance, has no such right of access. Thus, circumstances have changed, and the sheriff’s office may not rely on Open Records Letter No. 2019-25174 as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will consider the public availability of this information.

Next, we note the submitted 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 the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). The sheriff’s office seeks to withhold the information at issue under section 552.108 of the Government Code and common-law privacy. However, section 552.108 is a discretionary exception to disclosure that protects a governmental body’s interests and does not make

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<sup>2</sup> As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). We also note common-law privacy is not applicable to information contained in public court records. *See Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication); *see also Cox Broad. Corp. v. Cohn*, 420 U.S. 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (law cannot recall information once in public domain). Therefore, the sheriff's office may not withhold information contained in the court-filed documents under section 552.108 or section 552.101 of the Government Code in conjunction with common-law privacy. As no other exceptions to disclosure have been raised for this information, the sheriff's office must release the submitted court-filed documents pursuant to section 552.022(a)(17) of the Government Code.

Next, we understand the sheriff's office to assert some of the remaining information is subject to section 58.008(b) of the Family Code.<sup>3</sup> Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses section 58.008, which provides, in part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22.* The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See Fam. Code § 51.02(2)* (defining “child” for purposes

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<sup>3</sup> Although the sheriff's office argues the information at issue is made confidential by section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. *Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 21.*

of title 3 of Family Code). The information we marked involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>4</sup>

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

*Id.* § 261.201(a). The information we marked was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the sheriff's office. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. The sheriff's office does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>5</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A

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<sup>4</sup> As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

<sup>5</sup> As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue 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, 710 (Tex. 1977). You state the remaining information at issue relates to an active criminal investigation. Based upon this representation, we conclude the release of the information at issue would 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). Thus, with the exception of the information subject to section 552.022(a)(17) of the Government Code, the sheriff's office may withhold the information you marked under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the 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.). Thus, the sheriff's office must withhold all public citizens' dates of birth 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. The sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, as the requestor did not properly request the body worn camera video 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 sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the information subject to section 552.022(a)(17) of the Government Code, which must be released, the sheriff's office may withhold the information you marked in the remaining information under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The remaining information also must be released.

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 'Michelle Garza', written over a circular scribble.

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/gw

Ref: ID# 800209

Enc. Submitted documents

c: Requestor  
(w/o enclosures)