



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 17, 2019

Ms. Stephanie Berry  
Assistant City Attorney  
City of Denton  
215 East McKinney Street  
Denton, Texas 76201-4299

OR2019-35668

Dear Ms. Berry:

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# 801871 (Ref. Nos. C001182, R000758).

The City of Denton (the "city") received two requests from the same requestor for specified information pertaining to the requestor's arrest. You state you have released some information to the requestor. You claim some of the submitted 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, 552.103, and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

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

(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 give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.<sup>1</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).

Next, we note some of the remaining information is subject to article 2.1396 of the Code of Criminal Procedure, which provides,

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

(1) the stop;

(2) the arrest;

(3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or

(4) a procedure in which a specimen of the person’s breath or blood is taken.

Crim Proc. Code art 2.1396. The remaining information includes video recordings made by or at the direction of an officer employed by the city’s police department and contains footage of the conduct of the requestor during an interaction with the officer after being arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 (person commits offense if person is intoxicated while operating motor vehicle in public place). Thus, the requestor is entitled to receive a copy of these portions of the video recordings at issue pursuant to article 2.1396 of the Code of Criminal Procedure. Although you seek to withhold the recordings at issue under sections 552.103 and 552.108 of the Government Code, a statutory right of access prevails over the Act’s general exceptions to

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

public disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because sections 552.103 and 552.108 are general exceptions under the Act, the requestor's statutory right of access under article 2.1396 prevails. Therefore, the city may not withhold any portion of the remaining video recordings that depicts the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the requestor's blood or breath is taken under section 552.103 or 552.108 of the Government Code and must instead release this information to the requestor. However, we will address your arguments against disclosure of any remaining portions of the video recordings at issue.

Next, we note the remaining information includes information pertaining to the analysis of a blood specimen obtained by a peace officer. Section 724.018 of the Transportation Code provides that "[o]n request of the person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney." Transp. Code § 724.018. The requestor is the person who provided the specimen at the request of a peace officer. Although you claim the information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, a specific right of access provision prevails over the Act's general exceptions to disclosure. *See* Open Records Decision No. 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Therefore, the city must release the information we have marked pursuant to section 724.018 of the Transportation Code.

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 pertains to a pending criminal investigation and prosecution. We note the remaining information includes a DIC-24 Statutory Warning. Because a copy of this form was provided to the arrestee, we find the city has not demonstrated release of the DIC-24 form will interfere with the detection, investigation, or prosecution of crime. Accordingly, we conclude the DIC-24 form may not be withheld under section 552.108(a)(1). However, based on your representation and our review, we conclude the release of the remaining 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, section 552.108(a)(1) is applicable to the remaining information.

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). 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 the DIC-24 form and basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

Next, we address your argument under section 552.103 of the Government Code against release of the DIC-24 form. Section 552.103 provides, in relevant part, the following:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

We note the purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties to obtain information related to litigation through the discovery process. See ORD 551 at 4-5. Thus, any information obtained from or provided to all other parties in the anticipated or pending litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. As noted above, the submitted DIC-24 form was provided to the arrestee. Therefore, the city may not withhold the DIC-24 form under section 552.103(a) of the Government Code.

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103. See Open Records Decision No. 597 (1991).

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. The city must release the portions of the remaining video recordings that depict the stop, the arrest, or the conduct of the requestor's client pursuant to article 2.1396 of the Code of Criminal Procedure. The city must release the information we have marked pursuant to section 724.018 of the Transportation Code. With the exception of the DIC-24 form and basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code. The city must release the remaining information.<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,



Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/be

Ref: ID# 801871

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.