



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 8, 2020

Mr. Michael T. Garner  
Assistant City Attorney  
City of Conroe  
P.O. Box 3066  
Conroe, Texas 77305

OR2020-00797

Dear Mr. Garner:

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# 805154.

The City of Conroe (the "city") received a request for information pertaining to a specified arrest involving the requestor. You state the city released the basic information pursuant to section 552.108(c) of the Government Code. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). We understand the city received the request for information on October 8, 2019. The city does not inform us it was closed for any business days between October 8, 2019, and October 22, 2019. Accordingly, the city was required to provide the information required by section 552.301(b) by October 22, 2019. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked October 23, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the city failed to comply with the requirements of section 552.301 of the Government Code.

Nevertheless, the submitted information includes officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code, which provides

the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) reads as follows:

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 provided the requisite information under section 1701.661(a) for the body worn camera recordings. Section 1701.662(a) of the Occupations Code reads as follows:

Notwithstanding Section 552.301(b), Government Code, a governmental body's request for a decision from the attorney general about whether a requested body worn camera recording falls within an exception to public disclosure is considered timely if made not later than the *20th business day* after the date of receipt of the written request.

*Id.* § 1701.662(a) (emphasis added). Thus, notwithstanding the city's failure to comply with section 552.301(b), we find the city timely requested a decision to withhold the submitted body worn camera recordings in accordance with section 1701.662(a). Accordingly, we will address your argument against disclosure of the body worn camera recordings under section 552.108. However, pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The city claims section 552.108 of the Government Code for the remaining information. However, we find you have failed to establish a compelling reason to address your claim under section 552.108 for this information. Accordingly, no portion of the remaining information may be withheld under section 552.108.

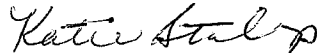
Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A 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). The city states the submitted body worn camera recordings relate to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information

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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n. r. e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the submitted body worn camera recordings under section 552.108(a)(1) of the Government Code. The city must release the remaining information.<sup>1</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,



Katie Stallcup  
Attorney  
Open Records Division

AKS/eb

Ref: ID# 805154

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup> We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023; ORD 481 at 4 (1987). Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.