



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 27, 2020

Ms. Cherelle Sims
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2020-02465

Dear Ms. Sims:

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# 808343 (C.A. File No. 19PIA0804).

Harris County Constable's Office, Precinct 5 (the "constable's office") received a request for information pertaining to a named deputy constable, including specified video recordings and certain personnel information. 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 note the constable's office has not submitted any of the personnel information. To the extent any information responsive to this portion of the request existed on the date the constable's office received the request, we assume the constable's office has released it. If the constable's office has not released any such information, it must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).*

Next, we note the submitted information includes a peace officer's 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 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 of the Occupations Code, our ruling does not reach this information and it need not be released.¹ 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 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). We note the information for which you raise section 552.108(a)(1) of the Government Code, includes traffic citations. Because a copy of the citations were provided to the individuals who were cited, we find release of the citations will not interfere with the detection, investigation, or prosecution of crime. Therefore, the constable’s office may not withhold the citations under section 552.108(a)(1). The constable’s office states report numbers 20197249464, 20193249539, 20193250988, and 20193249761 relate to open and ongoing criminal investigations. 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 (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 report numbers 20197249464, 20193249539, 20193250988, and 20193249761.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The constable’s office states report numbers 20193249631, 20193250148, 20193251078, 20193250452, 20193250922, and CE170901987 pertain to closed cases that did not result in conviction or deferred

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

adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to report numbers 20193249631, 20193250148, 20193251078, 20193250452, 20193250922, and CE170901987.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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). Thus, with the exception of the basic information and the citations we marked, the constable's office may withhold report numbers 20197249464, 20193249539, 20193250988, and 20193249761 under section 552.108(a)(1) of the Government Code and report numbers 20193249631, 20193250148, 20193251078, 20193250452, 20193250922, and CE170901987 under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 constable's office must withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

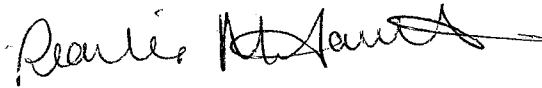
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. See Gov't Code § 552.130. Accordingly, the constable's office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, as the requestor did not provide the requisite information for the submitted body worn camera recordings pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. With the exception of the basic information and the citations we marked, which must be released, the constable's office may withhold report numbers 20197249464, 20193249539, 20193250988, and 20193249761 under section 552.108(a)(1) of the Government Code and report numbers 20193249631, 20193250148, 20193251078, 20193250452, 20193250922, and CE170901987 under section 552.108(a)(2) of the Government Code. However, in releasing the citations, the constable's office must withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.130 of the Government Code.

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 "Pearlie Gault", with a horizontal line extending to the right.

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 808343

Enc. Submitted documents

c: Requestor
(w/o enclosures)