



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 4, 2020

Mr. Joshua Goodwin
Ms. Rebecca Caballero
Waxahachie Police Department
630 Farley Street
Waxahachie, Texas 75165

OR2020-06756

Dear Mr. Goodwin and Ms. Caballero:

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# 814624.

The Waxahachie Police Department (the "department") received two requests from different requestors for certain information pertaining to a specified motor vehicle accident.¹ The department states it has released some information to the requestors. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we note the submitted information includes law enforcement 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 We note the department previously received an initial request for the same information from the first requestor. In response to the initial request, we understand the city responded to the requestor within five business days and then withheld certain information under section 552.108(a)(1) of the Government Code, pursuant to the previous determination this office issued to the department in Open Records Letter No. 2018-09055 (2018). Subsequently, the first requestor made another request for the same information on December 12, 2019.

- (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 second requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested by this requestor pursuant to chapter 1701, this information need not be released to the second requestor. 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). Nevertheless, the first requestor provides the requisite information under section 1701.661(a) for the submitted body worn camera recordings. Thus, we will address the department’s argument against the disclosure of this information.

Next, we note the information requested by the second requestor includes a CR-3 accident report. Section 552.101 of the Government Code excepts 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 information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, we note the second requestor may be a person listed under section 550.065(c). Thus, to the extent the second requestor is a person listed under section 550.065(c), the second requestor has a right of access to the CR-3 accident report pursuant to section 550.065(c). However, to the extent the second requestor is not a person listed under section 550.065(c), the submitted accident report is confidential under section 550.065(b) of the Transportation Code, and the department must withhold it from this requestor under section 552.101 of the Government Code. Nevertheless, section 550.065(c-1) requires the department to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, if the second requestor is not a person listed under section 550.065(c), then she has a right of access to the redacted accident report under section 550.065(c-1). Although the department asserts section 552.108 to withhold the information at issue, a statutory right of access prevails over the

Act's general exceptions to public disclosure. *See, e.g.*, 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 section 552.108 is a general exception under the Act, the requestor's statutory access under section 550.065(c) or section 550.065(c-1) prevails, and the department may not withhold the information at issue under section 552.108 of the Government Code.

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). Generally, 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). The department states the remaining information pertains to an active criminal prosecution. Based upon this representation and our review, we conclude release of the remaining 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 the remaining information.

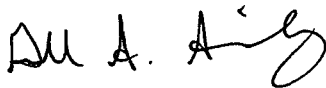
However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, as the body worn camera recordings were not properly requested by the second requestor pursuant to section 1701.661 of the Occupations Code, our ruling does not reach the body worn camera recordings at issue and they need not be released to the second requestor. To the extent the second requestor is a person listed under section 550.065(c), the department must release the submitted CR-3 accident report in its entirety to the second requestor pursuant to section 550.065(c) of the Transportation Code. To the extent the second requestor is not a person listed in section 550.065(c), the department must withhold the submitted CR-3 accident report from the second requestor under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code but must release the redacted accident report to the second requestor pursuant to section 550.065(c-1) of the Transportation Code. With the exception of basic information, which the department states it has released, the department may withhold the remaining information under section 552.108(a)(1) 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 "Gerald Arismendez". The signature is written in a cursive style with a large initial "G" and "A".

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/rm

Ref: ID# 814624

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)