



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2020

Ms. Captoria Brown
Senior Paralegal
City of Carrollton
P.O. Box 110535
Carrollton, Texas 75011-05351

OR2020-08397

Dear Ms. Brown:

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# 818804 (ORR# 18485, 18918, 18930).

The City of Carrollton (the "city") received three requests from different requestors for information pertaining to a specified arrest. The city states it has released some of the requested information, but claims some the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The submitted information includes a body worn camera recording of a police officer. 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 the following:

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). The third requestor does not give the requisite information under section 1701.661(a). As this requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information and the city is not required to release it to that requestor. 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). The remaining requestors properly requested the body worn camera recording pursuant to chapter 1701 of the Occupations Code. Therefore, we will address the city’s argument against its disclosure with respect to the remaining requests.

Next, we note some of the submitted video recordings are 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 video recordings at issue were made by or at the direction of a city police officer and contain footage of the first requestor’s client being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 (“A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.”). Therefore, the first requestor is entitled to receive copies of these video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. A statutory right of access prevails over the Act’s general exceptions to public disclosure, including section 552.108 of the Government Code. *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). Accordingly, the department must release these video recordings to the first requestor pursuant to article 2.1396 of the Code of Criminal Procedure.

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 remaining information it has marked under section 552.108(a)(1) relates 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 remaining information it has marked under section 552.108(a)(1) of the Government Code.¹

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. Section 552.130 protects personal privacy and section 552.023(a) of the Government Code provides a governmental body may not deny access to a person or a person’s representative to whom the information relates on the grounds that the information is considered confidential under privacy principles. *See id.* § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code, unless a requestor has a right of access to it pursuant to section 552.023 of the Government Code.

In summary, because the third requestor did not properly request the submitted body worn camera recording pursuant to chapter 1701 of the Occupations Code, our ruling does not reach the body worn camera recording at issue and the city is not required to release it to that requestor. Pursuant to article 2.1396 of the Code of Criminal Procedure, the city must release to the first requestor the submitted video recordings that were made by or at the direction of a city police officer and contain footage of the first requestor’s client being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. The city may withhold the remaining information it has marked under section 552.108(a)(1) of

¹ As our ruling is dispositive, we do not address the other arguments of the city to withhold this information.

the Government Code. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code, unless a requestor has a right of access to it pursuant to section 552.023 of the Government Code. The city must release the remaining information.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/rm

Ref: ID# 818804

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)