



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 27, 2020

Mr. Stephen D. Gates  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79701

OR2020-14641

Dear Mr. Gates:

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# 830277 (Reference No. M029617-030920).

The City of Midland (the "city") received a request for information pertaining to a specified motor vehicle accident involving the requestor's client. You state the city has released some of the requested information, including the CR-3 Crash Report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for the release of accident report to person or entity listed under this subsection). You also state the submitted body worn camera recordings were not properly request pursuant to chapter 1701 of the Occupations Code. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note incident report number 18040827 is not responsive to the instant request because it does not relate to the specified motor vehicle accident. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.<sup>1</sup>

Next, we note the submitted information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code.

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

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.<sup>2</sup> 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 552.101 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 section 773.091 of the Health and Safety Code, which provides, in relevant part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health and Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential

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<sup>2</sup>As we are able to make this determination, we need not address the remaining argument against disclosure of this information.

under section 773.091. Upon review, we find Exhibit D constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, with the exception of the information subject to section 773.091(g), the city must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety 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 that claims an exception to disclosure under section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining responsive information relates to a pending criminal investigation. Based upon your representation and our review, we find release of the 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 responsive 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; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

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. With the exception of the information subject to section 773.091(g), which must be released, the city must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. With the exception of basic information, which must be released, the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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<sup>3</sup> We note the information being released in this instance includes information that is confidential with respect to the general public. *See* Fam. Code § 261.201(k); *see also* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party’s representative, solely on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office.

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,

Jahnna Ward  
Assistant Attorney General  
Open Records Division

JW/be

Ref: ID# 830277

Enc. Submitted documents

c: Requestor  
(w/o enclosures)