



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 26, 2022

Mr. Chuong Q. Phung  
Assistant City Attorney  
City of Grand Prairie  
300 West Main Street  
Grand Prairie, Texas 75050

OR2022-02218

Dear Mr. Phung:

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# 926737 (Ref. No. GPCA 21-0283).

The Grand Prairie Police Department (the "department") received a request for information pertaining to a named individual, including information pertaining to two specified incidents.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2021-22914 (2021). In that ruling, we determined: (1) the submitted body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code and need not be released; (2) to the extent the information at issue was identical to the

---

<sup>1</sup> The department states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

information previously requested and ruled upon by this office, the department may continue to rely on Open Records Letter No. 2021-17959 (2021) as a previous determination and withhold or release the identical information in accordance with that ruling; (3) the department must withhold certain information under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code; (4) with the exception of the DIC-25 form and basic information, which must generally be released, the department may withhold certain information under section 552.108(a)(1) of the Government Code; (5) the department must withhold the information we marked under section 552.130 of the Government Code; and (6) the department must release the remaining information. We note the body worn camera video recordings at issue are now properly requested under section 1701.661(a) of the Occupations Code. Thus, we find the circumstances have changed with respect to the body worn camera video recordings at issue, and the department may not rely on Open Records Letter No. 2021-22914 as a previous determination with respect to this information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we have no indication the law, facts, or circumstances on which Open Records Letter No. 2021-22914 was based have changed with respect to the remaining information at issue. Accordingly, with the exception of the properly requested body worn camera recordings, the department may continue to rely on Open Records Letter No. 2021-22914 as a previous determination and withhold or release the requested information in accordance with that ruling.<sup>3</sup> To the extent the remaining information is not encompassed by the previous ruling, we will consider your arguments against disclosure of the information at issue.

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. This section encompasses information made confidential by other statutes. The information at issue consists of police officers’ body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 of the Occupations Code provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

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

---

<sup>3</sup> In this instance, as we are able to make this determination, we need not address your arguments against disclosure of this information.

(3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). As previously noted, the requestor provides the requisite information under section 1701.661(a) of the Occupations Code for release of the body worn camera recordings at issue. We note, however, section 1701.661(c) and section 1701.661(d) provide:

(c) Except as provided by Subsection (d), information recorded by a body worn camera and held by a law enforcement agency under this subchapter is not subject to the requirements of Section 552.021, Government Code.

(d) Information that is or could be used as evidence in a criminal prosecution is subject to the requirement of Section 552.021, Government Code.

*Id.* § 1701.661(c)-(d). You state Exhibit C relates to an incident that “was not criminal in nature.” Further, you state the body worn camera recordings at issue could not be used as evidence in a criminal prosecution. Based upon your representations and our review, we agree the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.661(c) of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov’t Code § 411.082 (2)(B)* (criminal history record information does not include driving record information). Further, active warrant information or other information relating to an individual’s current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system).

The present request, in part, seeks all records pertaining to a named individual. However, the requestor also seeks information pertaining to two specified incidents; thus, this portion of the request does not require the department to compile an individual’s criminal history and does not implicate the privacy interests of the named individual. Additionally, we note you have submitted information that pertains to routine traffic offenses and active warrants.

This information does not consist of a compilation of the named individual's criminal history, and the department may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. Accordingly, we will address the applicability of other exceptions to disclosure of this information.

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[.]” *Id.* § 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). You state Exhibit B pertains to an active criminal investigation or prosecution. Based on this representation, we conclude the 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 Exhibit B.

However, we note 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; 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 Exhibit B under section 552.108(a)(1) of the Government Code.

As previously noted, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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.). Therefore, the department must withhold the dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of the properly requested body worn camera recordings, the department may continue to rely on Open Records Letter No. 2021-22914 as a previous determination and withhold or release the requested information in accordance with that ruling. The department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.661(c) of the Occupations Code. With the exception of basic information, which must be released, the department may withhold Exhibit B under section 552.108(a)(1) of the Government Code. The department must withhold the dates

of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.<sup>4</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,

Alexandra C. Burks  
Assistant Attorney General  
Open Records Division

ACB/ba

Ref: ID# 926737

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>4</sup> We note the remaining information includes a social security number. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).