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ATTORNEY GENERAL OF TEXAS

February 7, 2022

Mr. Leonard V. Schneider
Counsel for the City of Huntsville
Liles Parker, P.L.L.C.
2261 Northpark Drive, Suite 445
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OR2022-03269

Dear Mr. Schneider:

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# 928609 (PIR No. 21-315).

The Huntsville Police Department (the "department"), which you represent, received a request for information pertaining to the arrest of a named individual. You state the department has released some information to the requestor. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

Initially, we note some of the submitted information is 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:

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

¹ Although you do not raise sections 552.101 and 552.147 of the Government Code in your brief, we understand you to raise these exceptions based on the substance of your arguments.

- (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 information at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and the department need not release the information we indicated.² See generally *King v. Paxton*, 576 S.W.3d 881 (Tex. App.—Austin 2019, pet. denied). 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.” Occ. Code § 1701.661(b). Upon review, we note the remaining information at issue does not consist of information subject to section 1701.661 of Occupations Code; thus, the department may not withhold any portion of the remaining information on that basis.

We note the remaining information contains video recordings that may be 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. Some of the remaining information, which we have indicated, consists of video recordings made by or at the direction of officers employed by the department and contain footage of the conduct of an individual during an interaction with the officers after being arrested on suspicion of an offense under section 49.04 of the Penal Code. See Penal Code § 49.04 (person commits offense if person is intoxicated while operating motor vehicle in public place). Thus, to the extent the requestor represents the individual at issue, he is entitled to receive a copy of those portions of this information pursuant to article 2.1396 of the Code of Criminal Procedure. Although you assert section 552.108 of the Government Code to withhold this information, a statutory right of access

² As we are able to make this determination, we need not address your arguments against disclosure of this information.

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 statutory right of access under article 2.1396 prevails. Therefore, to the extent the requestor represents the individual named in the request, the department may not withhold the remainder of the video recordings we indicated under section 552.108 of the Government Code. Additionally, we note, although you assert some of the information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, a statutory right of access prevails over the common-law. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law).

You also assert some of the information at issue is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). As previously noted, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* ORDs 613 at 4, 451. However, because section 552.130 has its own access provisions, we find section 552.130 is not a general exception under the Act. Consequently, we must address the conflict between the confidentiality provided under section 552.130 and the right of access provided under article 2.1396 of the Code of Criminal Procedure. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general, unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, section 552.130 generally excepts motor vehicle record information maintained in any context, while article 2.1396 specifically provides access to certain video footage pertaining to certain intoxication offense arrests. Therefore, we find the access to the video recordings at issue provided under article 2.1396 is more specific than the general confidentiality provided under section 552.130. Additionally, we note article 2.1396 is the later enacted statute. *See* Gov't Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Thus, we conclude the requestor's access to the video recordings under article 2.1396 prevails over the confidentiality of section 552.130. Therefore, the department may not withhold any portion of the video recordings at issue under section 552.130. Accordingly, to the extent the requestor represents the individual named in the request, the department must release the portions of the video recordings we have indicated that depict the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the requestor's client's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. However, to the extent the requestor

does not represent the individual at issue, we will address your arguments against disclosure of this information.

Next, we note the remaining information contains information relating to an analysis of a breath specimen of the individual named in the present request. Section 724.018 of the Transportation Code provides, “[o]n the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person’s attorney.” Transp. Code § 724.018. As noted above, the requestor may be requesting the information at issue as the attorney of the individual whose specimen is at issue. Although you seek to withhold the information at issue under section 552.108 of the Government Code, a specific right of access provision prevails over the Act’s general exceptions to disclosure. *See, e.g.*, ORDs 613 at 4, 451. Further, as noted above, a statutory right of access prevails over the common-law. *See Collins*, 297 S.W.3d at 415; *see also CenterPoint*, 436 F.3d at 544. Accordingly, to the extent the requestor represents the individual whose specimen is at issue, the department must release the information we have marked to this requestor pursuant to section 724.018 of the Transportation Code. However, to the extent the requestor does not represent the individual at issue, we will address your arguments against 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.” 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). You state the information at issue pertains to an ongoing criminal investigation or prosecution. We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension, copies of which were provided to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code* § 552.108(a)(1). Therefore, the DIC-24 and DIC-25 forms, which we have marked, may not be withheld under section 552.108(a)(1). However, based on your representations and our review, we conclude the release of the remaining 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 information at issue.

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; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code, but does include the social security number of an arrestee. ORD 127 at 3-4. Accordingly, with the exception of the marked DIC-24 and DIC-25 forms and the basic information, the

department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

We note the marked DIC-24 and DIC-25 forms both contain a date of birth. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). However, to the extent the requestor represents the individual named in the request, we note the requestor a right of access to information pertaining to his client that would otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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). Accordingly, to the extent the requestor does not represent the individual named in the request, the department must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note the marked DIC-24 and DIC-25 forms contain motor vehicle record information subject to section 552.130 of the Government Code. As discussed above, section 552.130 excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. We note section 552.130 is designed to protect the privacy of individuals. Thus, to the extent the requestor represents the individual named in the request, the requestor has a right of access to his client's motor vehicle record information and it may not be withheld from him under section 552.130. *See id.* § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Accordingly, to the extent the requestor does not represent the individual named in the request, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. Gov't Code § 552.147(a). However, to the extent the requestor represents the individual named in the request, the requestor has a right of access to his client's social security number. *See generally id.* § 552.023(b). Accordingly, to the extent the requestor does not represent the individual named in the request, the department may withhold the arrestee's social security number within the basic information under section 552.147 of the Government Code.

In summary, as the information at issue was not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the

department need not release the information we indicated. To the extent the requestor represents the individual named in the request, the department must release the portions of the video recordings we have indicated that depict the stop, the arrest, the conduct of the requestor's client, or a procedure in which a specimen of the requestor's client's blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. To the extent the requestor represents the individual whose specimen is at issue, the department must release the information we have marked to this requestor pursuant to section 724.018 of the Transportation Code. With the exception of the marked DIC-24 and DIC-25 forms and the basic information, which must generally be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing the marked DIC-24 and DIC-25 forms and the basic information, to the extent the requestor does not represent the individual named in the request, the department: (1) must withhold the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) must withhold the motor vehicle record information under section 552.130 of the Government Code; and (3) may withhold the arrestee's social security number under section 552.147 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/eb

Ref: ID# 928609

Enc. Submitted documents

c: Requestor
(w/o enclosures)