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ATTORNEY GENERAL OF TEXAS

February 17, 2022

Mr. Norman Ray Giles
Counsel for the City of Friendswood
Lewis Brisbois Bisgaard & Smith LLP
24 Greenway Plaza, Suite 1400
Houston, Texas 77046

OR2022-04850

Dear Mr. Giles:

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# 927449 (File Reference No. 3856.1009).

The Friendswood Police Department (the "department"), which you represent, received two requests from the same requestor for (1) all body worn and dashboard camera video recordings regarding a specified case number involving two named individuals and (2) audio recordings regarding the arrests or interviews of two named individuals and a specified 9-1-1 audio recording. You claim some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹ We note the requestor generally has a right of access to the information at issue pursuant to section 261.201(k) of the Family Code. *See* Fam. Code § 261.201(k) (parent of child victim of abuse or neglect who is not suspected of abuse or neglect has right of access to information otherwise confidential under section 261.201(a) of the Family Code). *But see id.* § 261.201(l)(2) (providing any information excepted from required disclosure under the Act or other law must be withheld from disclosure).

² 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 that those records contain substantially different types of information than that submitted to this office.

We note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]” unless it is excepted by section 552.108 of the Government Code or “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(1). The submitted information consists of completed investigations, which are subject to section 552.022(a)(1) and must be released unless the information is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. *Id.* Although you assert this information is excepted from disclosure under section 552.103 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the department may not withhold the submitted information under section 552.103. However, as previously noted, section 552.022(a)(1) states information subject to that section may be withheld under section 552.108. Accordingly, we will address your argument under this exception.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state case number 21-0160 relates to a criminal charge against an individual that was ultimately dismissed and did not result in conviction or deferred adjudication. In addition, you state case number 21-0161 relates to a case with three charges, in which two of the charges resulted in conviction or deferred adjudication, but the other charge concluded in a result other than conviction or deferred adjudication. We understand you to assert the information for the cases is so intertwined that it cannot be segregated. Based upon your representations and our review, we conclude section 552.108(a)(2) is applicable the information at issue, and the department may withhold the submitted information on that basis.³

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

³ As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

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 M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 927449

Enc. Submitted documents

c: Requestor
(w/o enclosures)