



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 3, 2022

Ms. Megan R. Santee  
Counsel for the City of Bee Cave  
Denton Navarro Rocha Bernal & Zech, P.C.  
2500 West William Cannon, Suite 609  
Austin, Texas 78745-5320

OR2022-12584

Dear Ms. Santee:

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# 945599 (Ref. No. 2022-02-08).

The Bee Cave Police Department (the "department"), which you represent, received a request for communications between a named individual and city and county officials and all police reports pertaining to the named individual and/or five other named individuals at a specified address during a certain time period. 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 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered your arguments and reviewed the submitted information.

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 the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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.

The present request requires the department to compile unspecified law enforcement records concerning the named individuals. We find this request for unspecified law enforcement records implicates the named individuals' right to privacy. However, you note, and we agree, the requestor may be acting as an authorized representative of one of the named individuals, in which case the requestor would have a special right of access to the otherwise private information of this individual and her minor children pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Because we are unable to determine whether the requestor is acting as an authorized representative of the individual at issue, we must rule conditionally. Accordingly, if the requestor is not acting as an authorized representative of the named individual at issue in the present request, then, to the extent the department maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup> If, however, the requestor is acting as an authorized representative of the named individual at issue, then the department may not withhold information involving the named individual or her minor children under section 552.101 in conjunction with common-law privacy as a compilation of criminal history. In that instance, we will consider whether the information at issue is excepted from disclosure under the Act.

Additionally, information that refers to an individual solely as a victim, witness, or involved person is not part of a compilation of the individual's criminal history and may not be withheld under section 552.101 on that basis. We note you have submitted information in which none of the named individuals are depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the named individuals and may not be withheld as a compilation of criminal history. Accordingly, we will address your arguments against disclosure of this information.

Next, we note some of the information at issue includes police officers' body worn camera recordings. 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:

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:

---

<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

- (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 give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings pursuant to chapter 1701, our ruling does not reach this information, which we indicated, and it need not be released. 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). However, the remaining information at issue does not consist of body worn camera recordings. Therefore, the remaining information is not subject to section 1701.661 of the Occupations Code, and the department may not withhold any of the remaining recordings under section 552.101 of the Government Code on that basis.

To the extent the requestor represents the named individual at issue, you claim some of the information at issue may be subject to section 261.201 of the Family Code. Section 552.101 of the Government Code also encompasses information made confidential by other statutes, including section 261.201, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this

subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(1) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). Upon review, we find the information we indicated was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). To the extent the requestor represents the named individual at issue, the requestor is the representative of a parent of the alleged child victim at issue and the parent is not accused of committing the alleged or suspected child abuse or neglect. Therefore, the department may not withhold the information at issue from the requestor on the basis of section 261.201(a) of the Family Code. *See id.* § 261.201(k). Section 261.201(l)(3) provides the identity of the reporting party must be withheld. Therefore, the department must withhold the identifying information of the reporting party, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. Further, section 261.201(l)(2), states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Therefore, we will consider whether the remaining information at issue may be otherwise excepted from disclosure.

To the extent the requestor is the authorized representative of the individual at issue, you assert the remaining information at issue is subject to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the information at issue pertains to criminal investigations that did not result in convictions or deferred adjudications. Based on this representation, we agree section 552.108(a)(2) is applicable to the information at issue.

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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle Publishing*

*Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code.

In summary, if the requestor is not acting as an authorized representative of the named individual at issue, then, to the extent the department maintains law enforcement records depicting any of the named individuals as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. As the requestor did not properly request the body worn camera recordings pursuant to chapter 1701 of the Occupations, our ruling does not reach the information we indicated, and it need not be released. To the extent the requestor is the authorized representative of the individual at issue, (1) the department must withhold the identifying information of the reporting party, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code, and (2) with the exception of basic information, which must be released, the department may withhold the information at issue under section 552.108(a)(2) of the Government Code. The department must release the remaining information we indicated.

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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/mo

Ref: ID# 945599

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Withholding Instructions for USBs in ID# 945599

For entirety of USB 2:

- Withhold all if requestor does not represent Ashely Cobb. If requestor does represent Ashley Cobb, withhold under 552.108.

From USB 1:

- Withhold under .101/CLP if requestor does not represent Ashely Cobb. If requestor does represent Ashley Cobb, withhold under 552.108.
  - o RyanHalley\_202201061338...
  - o MSG00556
- Withhold under 1701.661(a)
  - o EdwardCastro\_22001171946\_WFC...
  - o Audio only from remaining EdwardCastro recordings. Release video.

We are unable to Access ScottRosenbaum\_202112221552... or LupeNavarro\_20201121257. Therefore, we have treated the other recordings you submitted as a representative sample. We assume that 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.