



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2022

Ms. Shawnta Adams
Assistant City Attorney
City of Arlington
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2022-14232

Dear Ms. Adams:

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# 948342 (Ref. No. R130767).

The Arlington Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor. You state you have released some information to the requestor, including blood alcohol analysis results pursuant to section 724.018 of the Transportation Code and basic information pursuant to section 552.108(c) of the Government Code, DIC-24 and DIC-25 forms, and certain video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.1396 (person stopped or arrested on suspicion of DWI is entitled to receive copy of video that contains footage of stop, arrest, conduct of person stopped during interaction with officer, or procedure in which specimen of person's breath or blood is taken). You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information 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 provides, in relevant part, the following:

¹ 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.

(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, our ruling does not reach this information and it need not be released.² 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).

Next, we note the submitted information includes documents that were filed with a court. Section 552.022 of the Government Code provides for required public disclosure of “information that is also contained in a public court record,” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although the department seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See* Gov’t Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). Therefore, the court-filed documents, which we marked, may not be withheld under section 552.108. Accordingly, the department must release the information we marked pursuant to section 552.022(a)(17) of the Government Code. However, we will address your argument against disclosure of the remaining information.

Additionally, we note some of the remaining information, which we marked, consists of information pertaining to the test results of an individual’s blood alcohol content. Section 724.018 of the Transportation Code provides that “[o]n request of the 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. In this instance, the requestor is the person who provided the specimens at the request of a peace officer. Although you claim this information is excepted from disclosure under section 552.108 of the Government Code, a specific right of access provision prevails over the Act’s general exceptions to disclosure. *See* ORD 451. Therefore, the department must release the information we marked to the requestor pursuant to section 724.018 of the Transportation 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,

² As our ruling is dispositive, we need not address your argument against disclosure of this information.

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 claiming section 552.108 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 remaining information relates to a pending investigation. Based on your representation, we find release of the remaining information 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. Accordingly, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, as the body worn camera recordings at issue were not properly requested pursuant to chapter 1701, our ruling does not reach this information and it need not be released. The department must release the information we marked pursuant to section 552.022(a)(17) of the Government Code. The department must release the information we marked to the requestor pursuant to section 724.018 of the Transportation Code. The department may withhold the remaining information under section 552.108(a)(1) of the Government Code.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 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,

Joseph Hoggatt
Assistant Attorney General
Open Records Division

JWH/jm

³ We note the requestor has a right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground 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). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

Ref: ID# 948342

Enc. Submitted documents

c: Requestor
(w/o enclosures)