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ATTORNEY GENERAL OF TEXAS

July 18, 2022

Ms. Amanda Davis
Counsel for the Town of Little Elm
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2022-20731

Dear Ms. Davis:

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# 959763 (Reference Nos. P000498 and 5.10.22).

The Little Elm Police Department (the "department"), which you represent, received two requests from different requestors for information pertaining to report number 22044653. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note you have submitted only a 9-1-1 audio recording, dashboard camera recordings, and body worn camera recordings in response to the requests for information and have not submitted information responsive to all the categories of information to which the first requestor seeks access. To the extent any additional information responsive to the first request existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the department's obligations with respect to the first request for information under section 552.301 of the Government Code, which prescribes the

procedures a governmental body must follow in asking this office to decide whether requested information is exempted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, the department received the first request for information on April 21, 2022. You do not inform us the department was closed for any business days between April 21, 2022, and May 5, 2022. Thus, the department's ten and fifteen-business-day deadlines for the first request were May 5, 2022, and May 12, 2022, respectively. Additionally, with respect to the body worn camera recordings at issue, we note the department's twenty-business-day and twenty-five-business-day deadlines for the first request were May 19, 2022, and May 26, 2022, respectively. *See* Occ. Code § 1701.662(a), (c). We note the department did not raise section 552.108 of the Government Code with respect to the information responsive to the first request, which is also responsive to the second request, until May 24, 2022. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department failed to comply with the requirements of section 552.301 of the Government Code with respect to its claim under section 552.108 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although the department claims section 552.108 of the Government Code for some of the information at issue, we find the department failed to establish a compelling reason to address its argument under this exception. However, we will consider the department's timely raised argument under section 552.130 of the Government Code. Additionally, the department claims section 552.101 of the Government Code for the information at issue. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this exception against release of the information at issue.

Section 552.130 of the Government Code exempts 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. Upon review, we find the submitted dashboard camera recordings and body worn camera recordings contain confidential motor vehicle record

information. You state the department does not have the technological capability to redact the motor vehicle record information from the recordings. Accordingly, the department must withhold the submitted dashboard camera recordings and body worn camera recordings in their entirety under section 552.130 of the Government Code.¹ *See* Open Records Decision No. 364 (1983). However, we find you have failed to demonstrate the remaining recording is subject to section 552.130 of the Government Code. Therefore, the department may not withhold the remaining recording under section 552.130 of the Government Code. The department must release the remaining recording.

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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 959763

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information or the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).