



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2022

Ms. Kelley K. Messer
First Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2022-20933

Dear Ms. Messer:

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# 960254 (Reference No. 22-914).

The Abilene Police Department (the “department”) received a request for any and all information pertaining to case number 21-024011. You state the department will redact certain motor vehicle record information pursuant to section 552.130(c) of the Government Code and certain dates of birth pursuant to the previous determination issued in Open Records Letter No. 2019-32652 (2019).¹ You claim the submitted information is excepted from disclosure under sections 552.108 and 552.1085 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted representative sample of information.³

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2019-32652 is a previous determination issued to the City of Abilene, which includes the department, authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

² We note the department initially raised section 552.108(a)(2) of the Government Code for the submitted information. However, based on the correspondence sent to this office in a letter dated May 17, 2022, the department withdraws its claim under section 552.108(a)(2). As such, we do not address the applicability of section 552.108(a)(2) of the Government Code to the submitted information. Nevertheless, the department timely raised section 552.108(a)(1) of the Government Code. Accordingly, we will consider the department’s arguments under section 552.108(a)(1) for the submitted information.

³ 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
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Initially, you inform us the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2021-23435 (2021). However, upon review, we find there has been a change in the law, facts, or circumstances on which the previous ruling was based. Consequently, we conclude the department may not rely on Open Records Letter No. 2021-23435 as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will consider the submitted arguments against disclosure of the information at issue.

Next, we note the submitted information contains information relating to an analysis of a blood specimen of a deceased individual. 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. Although you seek to withhold the information at issue under section 552.108 of the Government Code, we note a specific right of access provision prevails over the Act’s general exceptions to 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). In this instance, the requestor is requesting the information as the authorized representative of the estate of the deceased individual who provided the blood specimen at the request of a peace officer. Accordingly, the department must release the information we marked to this 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, or prosecution of crime . . . if: (1) 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(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 remaining information relates to a pending criminal investigation. Generally, the release of information pertaining to an open case is presumed to interfere with the criminal investigation. *See Houston Chronicle Publ’g 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) (court delineates law enforcement interests that are present in active cases). We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The Statutory Warning and Notice of Suspension have previously been provided to the arrestee. Because copies of these documents have previously been released to the arrestee, we find the department has not shown how release of the documents will interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code § 552.108(a)(1). However, because the remaining information at issue has not been previously released, we

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.

conclude release of this information would interfere with the detection, investigation, or prosecution of crime. Thus, we find section 552.108(a)(1) is applicable to the remaining information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the DIC-24 and DIC-25 forms and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

In summary, the department must release the information we marked to this requestor pursuant to section 724.018 of the Transportation Code. With the exception of the DIC-24 and DIC-25 forms and basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 960254

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ 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).