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ATTORNEY GENERAL OF TEXAS

July 20, 2022

Mr. Kevin McKethan
Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2022-21191

Dear Mr. McKethan:

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# 960178 (Ref. No. P008619-042822).

The Odessa Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor. You state the department has released some of the requested information. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the department has redacted information from the submitted documents. You state the department has redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.² However, the department has also redacted dates of birth from the submitted documents. You do not assert, nor does our review of the records indicate, the department has been authorized to withhold this information without

¹ Although the department does not raise section 552.101 or section 552.130 of the Government Code in its brief, we understand the department to raise these exceptions based on its markings.

² 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).

seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the department should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Next, 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:

(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 of the Occupations Code, our ruling does not reach this information and it need not be released.³ 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 remaining information includes a CR-3 accident report, which is subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. *See* Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and

³ As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

(c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the requestor is a person listed under section 550.065(c). *See id.* § 550.065(c)(4)(B) (providing a governmental entity shall release the information to an authorized representative of any person involved in the accident). Although you assert section 552.108 to withhold the information at issue, a statutory right of access prevails over the Act's general exceptions to public 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). Because section 552.108 is a general exception under the Act, the requestor's statutory access under section 550.065(c) prevails and the department may not withhold the information at issue under section 552.108 of the Government Code. Additionally, although you also raise section 552.101 of the Government Code in conjunction with common-law privacy for portions of the information at issue, we note a statutory right of access overcomes the common law. *See Collins v. Tex. Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle). Therefore, the department may not withhold any portion of the information at issue under section 552.101 of the Government Code on the basis of common-law privacy. However, you also assert section 552.130 of the Government Code for the motor vehicle record information contained in the information at issue. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. As noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See, e.g.,* ORDs 613 at 4, 451. Because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the confidentiality provided under section 552.130 of the Government Code and the right of access provided under section 550.065(c) of the Transportation Code for the submitted CR-3 accident report.

Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/ CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) ("more specific statute controls over the more general"); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451. Section 550.065(c) specifically provides access only to accident reports of the type at issue, while section 552.130 generally excepts motor vehicle record information maintained in any context. Therefore, we conclude the access to the accident report provided under section 550.065(c) is more specific than the general confidentiality provided under section 552.130. Accordingly, the department may not withhold any portion of the submitted CR-3 accident report under section 552.130 of the Government Code. Thus, the department must release the submitted CR-3 accident report to this requestor pursuant to section 550.065(c) 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 . . . 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 information at issue relates to an active criminal investigation or prosecution. We note, however, the information at issue includes a DIC-24 Statutory Warning and a DIC-25 Notice of Suspension. The DIC-24 Statutory Warning and DIC-25 Notice of Suspension have previously been provided to the arrestee. You have not explained how releasing this information, which has already been seen by the arrestee, would interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code § 552.108(a)(1)*. Accordingly, the DIC-24 Statutory Warning and DIC-25 Notice of Suspension may not be withheld under section 552.108. However, based upon your representations, we conclude release of the remaining information at issue 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), *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). Thus, we find section 552.108(a)(1) is applicable to the remaining information at issue.

However, we note 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). 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). We note basic information includes, among other items, a detailed description of the offense. *See* ORD 127 at 3-4. However, we note basic information does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* In this instance, you have marked the entire narrative portion of the submitted incident report as information the department seeks to withhold under section 552.108. The remaining information at issue does not contain information sufficient to satisfy the requirement that a “detailed description of the offense” be released as basic information. *See id.* Accordingly, we determine the department must release a sufficient portion of the narrative to encompass a detailed description of the offense. Accordingly, with the exception of the DIC-24 Statutory Warning, DIC-25 Notice of Suspension, and basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴

In summary, the submitted body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code and they need not be released. The department must release the submitted CR-3 accident report to this requestor pursuant to section 550.065(c) of the Transportation Code. With the exception of the DIC-24 Statutory Warning, DIC-25 Notice of Suspension, and basic information, which must be released, the

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

department may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁵

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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jm

Ref: ID# 960178

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵ We note the requestor has a right of access to some of the information being released. *See* Transp. Code § 550.065(c); 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.