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ATTORNEY GENERAL OF TEXAS

August 23, 2022

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

OR2022-25467

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# 967935 (Ref. Nos. P23318 and P23337).

The City of McKinney (the "city"), which you represent, received two requests from different requestors for certain information pertaining to a specified incident. 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 information.

Initially, we note the first request seeks only body worn camera and dashboard camera recordings pertaining to the incident specified in the requests, while the second request seeks only body worn camera and 9-1-1 audio recordings pertaining to the incident at issue. We also note some of the submitted information, which we have marked, is not responsive to either of the present requests because it does not consist of body worn camera, dashboard camera, or 9-1-1 audio recordings. This ruling does not address the public availability of any information that is not responsive to the present requests, and the city need not release information to either of the requestors that is not responsive to their respective requests.¹

Next, we note the requested information includes city 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:

¹ As we are able to make this determination, we need not address your argument against disclosure of the information that is not responsive to either of the present requests.

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 requestors do not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the city need not release it.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, and you acknowledge, the city failed to comply with section 552.301(b) of the Government Code with respect to the first request for information. *See* Gov’t Code § 552.301(b). 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). You claim section 552.108 of the Government Code for the remaining information responsive to the first request. However, we find you have failed to establish a compelling reason to address your claim against disclosure with respect to the remaining information responsive to the first request. Because section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this section to the remaining information responsive to the first request.³ We will also consider your argument under section 552.108 for the remaining information responsive to the second request.

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

² As we are able to make this determination, we need not address your argument against disclosure of this information.

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 responsive to the second request, which we have indicated, pertains to an open and pending criminal investigation. Based on this representation and our review, we conclude release of the 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) (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). Accordingly, the city may withhold the information we have indicated under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code provides 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*. Accordingly, the city must withhold all visible license plates and registration stickers within the remaining recordings responsive to the first request under section 552.130 of the Government Code.

In summary, as the body worn camera recordings at issue were not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the city need not release it. The city may withhold the information we have indicated under section 552.108(a)(1) of the Government Code. The city must withhold all visible license plates and registration stickers within the remaining recordings responsive to the first request under section 552.130 of the Government Code. The city must release the remaining responsive information to the first requestor.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

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Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)