



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 30, 2022

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
315 South Santa Rosa, 6<sup>th</sup> Floor  
San Antonio, Texas 78207

OR2022-26301

Dear Mr. Kopp:

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# 969392 (COSA File No. W451988).

The San Antonio Police Department (the "department") received a request for information pertaining to a specified address during a specified time period. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information is 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:

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

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<sup>1</sup> 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.

(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 information we indicated was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and the department need not release the information we indicated.<sup>2</sup> See generally *King v. Paxton*, 576 S.W.3d 881 (Tex. App.—Austin 2019, pet. denied). 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.” Occ. Code § 1701.661(b).

Next, we note the remaining information submitted by the department includes a court-filed document. Section 552.022(a)(17) 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). You seek to withhold the information at issue under section 552.108 of the Government Code. However, 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 *id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the department may not withhold the court-filed document, which we marked, under section 552.108. Additionally, you seek to withhold this information under section 552.101 of the Government Code in conjunction with common law privacy. However, we note information that has been filed with a court is not protected by common-law privacy. See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As no other exceptions are raised, this information must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will consider your arguments against disclosure of the remaining information not subject to section 552.022 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

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<sup>2</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Report numbers SAPD22074790 and SAPD2022-0283005 were used or developed in investigations of alleged or suspected child abuse or neglect conducted by the department. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. The department does not indicate it has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the department must withhold report numbers SAPD22074790 and SAPD2022-0283005 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>3</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Report numbers SAPD-2021-1289378, SAPD2021-1506946, SAPD22037794, and SAPD-2022-0061001 involves juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the department must withhold report numbers SAPD-2021-1289378, SAPD2021-1506946,

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

SAPD22037794, and SAPD-2022-0061001 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>4</sup>

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). The department states report number SAPD-2022-0635519 pertains to an active criminal investigation or prosecution. Based on this representation, we conclude the 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). Thus, section 552.108(a)(1) is applicable to report number SAPD-2022-0635519.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states report number SAPD-2022-0343800 pertains to a closed case that did not result in a conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to report number SAPD-2022-0343800.

However, we note 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). Thus, with the exception of the basic information, which must be released, the department may withhold report number SAPD-2022-0635519 under section 552.108(a)(1) of the Government Code and report number SAPD-2022-0343800 under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides “an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. “Personal information” means “information that identifies a person,” and includes a person’s photograph, social security number, driver identification number, name, and address, but does not include a zip code, telephone number, or medical and disability information. *Id.* § 730.003(6). DPS is an “agency” for purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). You represent some of the remaining information consists of personal

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

information that the department obtained from DPS. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. However, none of the remaining information is confidential under section 730.004 or 730.013, and the department may not withhold it under section 552.101 on either of those grounds.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, we note some of the information at issue pertains to individuals who will be de-identified and whose privacy interests are, thus, protected. Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold all identifiable public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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.<sup>5</sup> *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we marked and all visible license plates and vehicle registration stickers under section 552.130 of the Government Code.

In summary, as the information we indicated was not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the department need not release the information we indicated. The department must release the court-filed document we marked pursuant to section 552.022(a)(17) of the Government Code. The department must withhold report numbers SAPD22074790 and SAPD2022-0283005 under section 552.101 of the Government Code in conjunction with

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<sup>5</sup> 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).

section 261.201 of the Family Code. The department must withhold report numbers SAPD-2021-1289378, SAPD2021-1506946, SAPD22037794, and SAPD-2022-0061001 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of the basic information, which must be released, the department may withhold report number SAPD-2022-0635519 under section 552.108(a)(1) of the Government Code and report number SAPD-2022-0343800 under section 552.108(a)(2) of the Government Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. The department must withhold all identifiable public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked and all visible license plates and vehicle registration stickers under section 552.130 of the Government Code. The department must release the remaining information.

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,

Pearlie Gault  
Assistant Attorney General  
Open Records Division

PG/jm

Ref: ID# 969392

Enc. Submitted documents

c: Requestor  
(w/o enclosures)