



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 20, 2022

Mr. Albert Escobedo Tovar
Attorney
VIA Metropolitan Transit
123 North Medina Street
San Antonio, Texas 78207

OR2022-28850

Dear Mr. Tovar:

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# 973513.

VIA Metropolitan Transit ("VIA") received a request for video footage pertaining to two specified incidents involving the requestor.¹ You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address VIA's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). In this instance, you state VIA received the request for information on June 13, 2022, and received clarification on June 28, 2022.

¹ VIA states it sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

See City of Dallas v. Abbott, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed). We note VIA was closed on July 4, 2022. This office does not count the date the request was received or holidays for purpose of calculating a governmental body's deadlines under the Act. Accordingly, VIA's ten-business-day deadline was July 13, 2022. However, you did not request a ruling from this office until July 14, 2022. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find VIA failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Nevertheless, the submitted information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code, which provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides as follows:

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). Upon review of the submitted information, we determine the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recordings at issue. Section 1701.662(a) of the Occupations Code provides as follows:

Notwithstanding Section 552.301(b), Government Code, a governmental body's request for a decision from the attorney general about whether a requested body worn camera recording falls within an exception to public disclosure is considered timely if made not later than the *20th business day* after the date of receipt of the written request.

Id. § 1701.662(a) (emphasis added). Accordingly, the 20th-business-day deadline for the body worn camera recordings was July 27, 2022. Thus, notwithstanding the VIA's failure to comply with section 552.301(b), we find VIA timely requested a decision to withhold the submitted body worn camera recordings in accordance with section 1701.662(a). Accordingly, we will address your argument against disclosure of the body worn camera recordings under sections 552.103, 552.108, and 552.130 of the Government Code. However, with respect to the remaining information, 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* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). VIA claims sections 552.103, 552.108, and 552.130 of the Government Code for the remaining information. 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 exception for the remaining information. However, we find you have failed to establish a compelling reason to address the remaining exceptions you claim against disclosure of the remaining information.

Next, we note section 552.301(e)(1)(D) of the Government Code states a governmental body asking for an attorney general decision must, within fifteen business days of receiving a request, provide the attorney general with “a copy of the specific information requested, or submit representative samples of information if a voluminous amount of information was requested.” Gov't Code § 552.301(e)(1)(D) (emphasis added). We note you submitted a voluminous amount of information, rather than a representative sample. We have reviewed a representative sample of the voluminous information submitted.

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[.]” *Id.* § 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 submitted information pertains to an active criminal 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). Accordingly, VIA may withhold the submitted body worn camera recordings under section 552.108(a)(1) of the Government Code.²

Section 552.130 of the Government Code 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. VIA asserts, and we agree, the remaining video recordings at issue contain confidential motor vehicle record information that is excepted from disclosure under section 552.130. In this instance, VIA states it does not possess the technological capability to redact information from video files. Thus, we agree VIA must withhold the entireties of the remaining video recordings under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, VIA may withhold the submitted body worn camera recordings under section 552.108(a)(1) of the Government Code. VIA must withhold the entireties of the remaining video recordings under section 552.130 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,

Sarah E. Reese
Attorney
Open Records Division

SER/jm

Ref: ID# 973513

Enc. Submitted documents

c: Requestor
(w/o enclosures)