



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 22, 2022

Ms. Marianella Joseph
Counsel for the City of Shiner
Bojorquez Law Firm, P.C.
11675 Jollyville Road, Suite 300
Austin, Texas 78759

OR2022-29291

Dear Ms. Joseph:

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# 970671 (Ref. No. 66152356).

The Shiner Police Department (the "department"), which you represent, received a request for certain information pertaining to a specified citation, specified department policies, and certain personnel information pertaining to a specified department officer. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered your arguments and reviewed the submitted representative sample of information.

Initially, we note you have not submitted information responsive to the portion of the request seeking specified department policies. Additionally, you do not inform us the department has released this information. Although you state the department has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information the department has submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the

¹ Although you also raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this exception applies to the information at issue. *See* Gov't Code §§ 552.301, .302.

portion of the request seeking specified department policies existed on the date the department received the request, we assume the department has released it to the requestor. If the department has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information includes a police officer's body worn camera recording. 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:

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 recording at issue 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 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). Upon review, we note the remaining information at issue does not consist of body worn camera recordings. Therefore, the remaining information is not subject to section 1701.661 of the Occupations Code, and the department may not withhold any portion of it on that basis.

Next, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code* § 552.301(e). The department received the present request for information on July 7, 2022. You do not inform us the department was closed for any business days between July 7,

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

2022, and July 28, 2022. Accordingly, the department was required to provide the information required by section 552.301(e) by July 28, 2022. The department submitted some of the information required by section 552.301(e), including written comments stating the reasons why the stated exceptions apply, a copy of the request for information, and portions of the requested information, by electronic submission on July 28, 2022. However, the envelope in which the department provided the remaining recordings at issue was postmarked August 4, 2022. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the department failed to comply with the procedural requirements mandated by section 552.301(e) of the Government Code with respect to the remaining recordings at issue.

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 recordings at issue. 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 recordings at issue.³ However, we find you have failed to establish a compelling reason to address your remaining argument against disclosure of the remaining recordings at issue. Nevertheless, we will address your argument under section 552.108 of the Government Code for the remaining information at issue.

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). Generally, 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). We note section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency’s personnel records); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You state the information at issue pertains to an ongoing criminal investigation. Based on your representations and our review, 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*

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).

n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). Accordingly, the department may withhold the information we have marked under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. We note section 552.130 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to his own motor vehicle record information, and it may not be withheld from him under section 552.130. *See id.* § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Accordingly, with the exception of the requestor's license plate, the department must withhold the visible license plates within the remaining recordings at issue under section 552.130 of the Government Code.

In summary, as the body worn camera recording at issue 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 it. The department may withhold the information we have marked under section 552.108(a)(1) of the Government Code. With the exception of the requestor's license plate, the department must withhold the visible license plates within the remaining recordings at issue under section 552.130 of the Government Code. The department must release the remaining information to this requestor.⁴

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

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⁴ As noted above, the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 970671

Enc. Submitted documents

c: Requestor
(w/o enclosures)