



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 16, 2022

Mr. Chuong Q. Phung  
Assistant City Attorney  
City of Grand Prairie  
300 West Main Street  
Grand Prairie, Texas 75050

OR2022-35739

Dear Mr. Phung:

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# 985042 (GPCA 22-0235).

The Grand Prairie Police Department (the "department") received a request for 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 representative sample of information.<sup>1</sup>

Initially, 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. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). You state the department received the request for information on August 22, 2022. You state the department was closed on September 5, 2022, in observance of Labor Day. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the department's

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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 that those records contain substantially different types of information than that submitted to this office.

ten-business-day deadline was September 6, 2022. We note the envelope in which the department provided the information required by section 552.301(b) is postmarked September 7, 2022. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the requirements of section 552.301 of the Government Code.

However, we note the submitted information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1702 of the Occupations Code. Section 1701.662(a) of the Occupations Code provides as follows:

Notwithstanding [s]ection 552.301(b) of the 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 the receipt of the written request.

Occ. Code § 1701.662(a) (emphasis added). Accordingly, the 20-business-day deadline for the body worn camera recordings was July 27, 2022. Thus, notwithstanding the department's failure to comply with section 552.301(b) of the Government Code, we find the department timely requested a decision to withhold the submitted body worn camera recordings in accordance with section 1701.662(a) of the Occupations Code. Accordingly, we will address the department's argument against disclosure of the submitted body worn camera recordings.

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). Because sections 552.101, 552.130, and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the submitted information.<sup>2</sup> However, we find you have failed to establish a compelling reason to address your claim under section 552.108 of the Government Code for the remaining information.

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 submitted body worn

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<sup>2</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

camera recordings relate to a pending criminal investigation, and release of the information would interfere with the investigation and prosecution of the case. Based upon 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, the department may withhold the submitted body worn camera recordings under section 552.108(a)(1) of the Government Code.<sup>3</sup>

Next, we note the remaining information contains a CR-3 accident report that 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. 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 (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). Here, the requestor is a person listed under section 550.065(c). Thus, the department must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.).

Upon review, we find the information we have marked and the public citizens' dates of birth in the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments nor the applicability of section 1701.661(a) of the Occupations Code to the submitted body worn camera video recordings. *See generally* Occ. Code § 1701.661(a), (e).

information we have marked and the public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public 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. *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked and the discernable license plates, vehicle identification numbers, and registration stickers in the remaining video recordings and photographs under section 552.130 of the Government Code.

We note some of the remaining information consists of personal e-mail addresses subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, the department may withhold the submitted body worn camera recordings under section 552.108(a)(1) of the Government Code. The department must release the accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. The department must withhold the information we have marked and the public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked and the discernable license plates, vehicle identification numbers, and registration stickers in the remaining video recordings and photographs under section 552.130 of the Government Code. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. The department must release the remaining information.<sup>4</sup>

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->

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<sup>4</sup> We note the remaining information includes social security numbers to which the requestor does not have a right of access. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

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Sincerely,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/mo

Ref: ID# 985042

Enc. Submitted documents

c: Requestor  
(w/o enclosures)