



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 21, 2022

Ms. Vanessa Hoopingarner
Records Manager
North Richland Hills Police Department
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR2022-36341

Dear Ms. Hoopingarner:

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# 986857 (W011715-081722).

The North Richland Hills Police Department (the "department") received a request for video recordings relating to a specified arrest. You state the department will release some information. We understand the department will redact public citizens' dates of birth pursuant to Open Records Letter No. 2019-18293 (2019).¹ The department claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

Initially, we note the requestor only seeks video recordings pertaining to the specified arrest. Therefore, the submitted police report is not responsive to the instant request. This ruling does not address the public availability of the non-responsive information, and the department need not release it to the requestor.

Next, we note the responsive information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations

¹ Open Records Letter No. 2019-18293 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office. See Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

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 give the requisite information under section 1701.661(a) for one of the body worn camera video recordings, which we have indicated. As the requestor did not properly request this body worn camera recording pursuant to chapter 1701, our ruling does not reach this information and it need not be released.² However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (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). We note the requestor provided the requisite information under section 1701.661(a) for the remaining body worn camera recordings at issue. As these body worn camera recordings were properly requested pursuant to chapter 1701 of the Occupations Code, we will address your arguments against their disclosure.

Next, we must address the procedural obligations of the department under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general’s decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov’t Code § 552.301(b). The department states it received the present request after business hours on August 17, 2022. Therefore, for purposes of section 552.301, the department received the request for information on August 18, 2022. The department also states, and provides documentation showing, it responded to the requestor within five business days in accordance with the previous determination this office granted the department in Open Records Letter No. 2017-10552 (2017). Open Records Letter No. 2017-10552 authorizes the department to withhold certain information from a requestor under section 552.108(a)(1) of the Government Code in specified circumstances without the necessity of first requesting a ruling from this office. We note, however, that previous determination states “the department may not rely on [Open Records Letter No. 2017-10552] in response to requests in which basic information is not responsive. For example, no basic information is at issue in a request for only a dashboard camera video recording or 9-1-1 call audio recording. Thus, the department may not rely upon this previous determination in response to those types of requests.” Because the request sought only video recordings for the

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

specified arrest, no basic information was at issue in that request, and the department was not authorized to rely upon Open Records Letter No. 2017-10552 to withhold the information from the requestor under section 552.108 of the Government Code. Accordingly, the department was required to provide the information required by section 552.301(b) within ten business days of its receipt request. Consequently, the department was required to provide the information required by section 552.301(b) by September 1, 2022. However, the envelope in which the department sent the information required by section 552.301(b) was postmarked September 13, 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). Accordingly, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

However, as noted above, the responsive information at issue includes police officers' body worn camera recordings, which are subject to chapter 1701 of the Occupations Code. Section 1701.662 of the Occupations Code provides, in relevant part:

(a) 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.

See Occ. Code § 1701.662(a) (emphasis added). Accordingly, the 20th-business-day deadline for the body worn camera recordings at issue was September 15, 2022. Thus, notwithstanding the department's failure to comply with section 552.301(b), we find the department timely requested a decision to withhold the body worn camera recordings at issue in accordance with section 1701.662(a). Accordingly, we will address your argument against disclosure of the body worn camera recordings under section 552.108 of the Government Code. However, with respect to the remaining responsive 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). The department claims sections 552.101, 552.108, and 552.130 of the Government Code for the remaining responsive information. Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the remaining responsive information. However, we find you have failed to establish a compelling reason to address the remaining exception you claim against disclosure of the remaining responsive information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes,

such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). Upon review, we find the department has failed to demonstrate the information at issue contains the originating telephone number or address that was provided by a 9-1-1 service supplier. Accordingly, the department may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Article 2.1396 of the Code of Criminal Procedure provides:

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test;
or
- (4) a procedure in which a specimen of the person's breath or blood is taken.

Crim. Proc. Code art. 2.1396. We note the responsive information at issue contains video recordings made by or at the direction of an officer employed by the department that includes footage of the requestor's client being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. *See* Penal Code § 49.04 ("A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place."). Therefore, the requestor is entitled to receive a copy of portions of these video recordings pursuant to article 2.1396 of the Code of Criminal Procedure. Although you assert the video recordings at issue are excepted from disclosure under section 552.108 of the Government Code, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). We note section 552.108 is a general exception under the Act. Accordingly, the requestor's statutory right of access under article 2.1396 prevails. Additionally, although you assert the information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, a statutory right of access prevails over the common-law. *Collins v. Tex Mall, L.P.*, 297 S.W. 3d 409, 415 (Tex.

App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, the department may not withhold any portion of the video recordings at issue that depicts the stop, the arrest, the conduct of the requestor’s client, or a procedure in which a specimen of his client’s blood or breath is taken under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.108 of the Government Code.

The department also asserts section 552.130 of the Government Code for the video recordings at issue. Section 552.130 provides 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 is excepted from public release. Gov’t Code § 552.130(a). As previously noted, a statutory right of access generally prevails over the Act’s general exceptions to disclosure. *See* ORDs 613 at 4, 451. However, because section 552.130 has its own access provisions, we find section 552.130 is not a general exception under the Act. Therefore, we must address the conflict between the confidentiality provided under section 552.130 and the right of access provided under article 2.1396 of the Code of Criminal Procedure. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general, unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, section 552.130 generally excepts motor vehicle record information maintained in any context, while article 2.1396 specifically provides access to certain video footage pertaining to certain intoxication offense arrests. Thus, we find the access to the video recordings at issue provided under article 2.1396 is more specific than the general confidentiality provided under section 552.130. Additionally, we note article 2.1396 is the later enacted statute. *See* Gov’t Code § 311.025(a) (if statutes enacted at different sessions of legislature are irreconcilable, statute latest in enactment prevails). Therefore, we conclude the requestor’s access to the video recordings at issue under article 2.1396 prevails over the confidentiality of section 552.130. Accordingly, the department may not withhold any portion of the video recordings at issue under section 552.130, and the department must release the portions of these video recordings that depict the stop, the arrest, the conduct of the requestor’s client, or a procedure in which a specimen of his client’s blood or breath is taken pursuant to article 2.1396 of the Code of Criminal Procedure. However, we will address your arguments against disclosure of the portions of the video recordings that are not subject to article 2.1396.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” *Id.* § 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). You state the remaining portions of the body worn camera recordings at issue relate to an ongoing investigation or prosecution. 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, section 552.108(a)(1) is applicable to the information at issue. Accordingly, the department may withhold the remaining portions of the body worn camera recordings at issue under section 552.108(a)(1) of the Government Code.³

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. We note, because section 552.130 protects privacy interests, the requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) (“person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, with the exception of information belonging to the requestor, the department must withhold the visible license plates and registration stickers in the remaining responsive information under section 552.130 of the Government Code.

In summary, as the requestor did not properly request the body worn camera recording we have indicated pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The department must release the remaining portions of the video recordings that depict the stop, the arrest, the conduct of the requestor, or a procedure in which a specimen of the blood or breath of the requestor is taken pursuant to article 2.1396 of the Code of Criminal Procedure. The department may withhold the remaining portions of the body worn camera recordings at issue under section 552.108(a)(1) of the Government Code. With the exception of information belonging to the requestor, the department must withhold the visible license plates and registration stickers in the remaining responsive information under section 552.130 of the Government Code. The department must release the remaining responsive information.⁴

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴ We note the requestor has a right of access to some of the information being released. *See Gov't Code* § 552.023(a), *Crim. Proc. Code art. 2.1396*; *ORD 481 at 4*. Thus, the department must again seek a decision from this office if it receives another request for the same information from another 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/pt

Ref: ID# 986857

Enc. Submitted documents

c: Requestor
(w/o enclosures)