



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2016

Ms. Ileana Fernandez
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2016-19539

Dear Ms. Fernandez:

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# 624628.

The City of Mesquite (the "city") received a request for information pertaining to the arrest of the requestor's client on a specified date. You state you will release some of the requested information to the requestor. You also state you will redact certain information in accordance with Open Records Letter Nos. 2011-15075 (2011), 2011-15761 (2011), 2012-07334 (2012), and 2015-24970 (2015).¹ Further, you state you will redact social security numbers under

¹Open Records Letter Nos. 2011-15075 and 2011-15761 authorize the city to withhold the originating telephone numbers and addresses, respectively, of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, without requesting a decision from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Open Records Letter No. 2012-07334 is a previous determination to the city authorizing the city to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law without requesting a ruling from this office. Open Records Decision No. 2015-24970 is a previous determination issued to the city authorizing the city to withhold private citizens's dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without a requesting a decision from this office.

section 552.147(b) of the Government Code.² You claim 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 you claim and reviewed the submitted information.

Initially, we note the requestor seeks a city 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 give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. 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).

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, 710 (Tex. 1977). You state the information at issue relates to a pending criminal investigation. 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*

²Section 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. Gov't Code § 552.147(b).

of Houston, 531 S.W.2d 177, 186-87 (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, 560-61 (Tex. 1976). Accordingly, the city may withhold Exhibit 3 under section 552.108(a)(1).

You raise section 552.101 of the Government Code for portions of the remaining video recordings. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”). *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1, of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411. Upon review, we find the information you have indicated within the remaining video recordings consists of CHRI the city must generally withhold under section 552.101 in conjunction with section 411.083.³

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 id.* § 552.130. Accordingly, the city must generally withhold the motor vehicle record information you have marked and indicated within the remaining video recordings under section 552.130.⁴

³We note an individual’s authorized representative may obtain her client’s CHRI from DPS. *See Gov’t Code* § 411.083(b)(3).

⁴As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

However, we note some of the submitted information is subject to article 2.139 of the Code of Criminal Procedure, as added by House Bill 3791 by the 84th Texas Legislature.⁵ Article 2.139 provides as follows:

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. 2.139. The submitted information includes a video recording made by or at the direction of an officer employed by the city's police department and contains footage of the requestor's client being stopped or arrested on suspicion of an offense under section 49.04 of the Penal Code. Penal Code § 49.04 (person commits offense if person is intoxicated while operating motor vehicle in public place). Therefore, the requestor is entitled to receive a copy of the video recording at issue pursuant to article 2.139 of the Code of Criminal Procedure. Although you claim the information at issue is excepted under section 552.101 of the Government Code in conjunction with the common-law informer's privilege, a specific statutory right of access to information 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); *see also 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). Therefore, the city may not withhold any portion of the video recording we have indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Portions of the video recording to which the requestor has access under article 2.139 of the Code of Criminal Procedure consist of CHRI subject to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and motor vehicle record

⁵Act of May 30, 2015, 84th Leg., R.S., ch. 1124, § 1 (codified at Crim. Proc. Code art. 2.139).

information subject to section 552.130 of the Government Code. We note a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* Open Record 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). However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, there is a conflict between the confidentiality provided under sections 411.083 and 552.130 and the right of access provided under article 2.139 for the video recording at issue. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *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). Although section 411.083 generally pertains to CHRI generated by the NCIC or by the TCIC and section 552.130 generally excepts motor vehicle record information maintained in any context, article 2.139 specifically provides access to certain video footage pertaining to stops or arrests on suspected violations of sections 49.04, 49.045, 49.07, and 49.08 of the Penal Code. Therefore, we find article 2.139 is more specific than, and prevails over, the general confidentiality provided under section 411.083 and section 552.130. Additionally, we note article 2.139 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). Thus, the city may not withhold any portion of the video recording we have indicated under section 552.101 in conjunction with section 411.083 or under section 552.130 and the video recording must be released pursuant to article 2.139.

You assert section 552.101 of the Government Code in conjunction with the common-law informer's privilege for some of the remaining information to which the requestor does not have a right of access pursuant to article 2.139 of the Code of Criminal Procedure. Section 552.101 also encompasses the informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a

violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

You state the information at issue within Exhibit 4 consists of the identity of a complainant who reported a possible violation of criminal law to the city's police department. Further, there is no indication the subject of the complaint knows the identity of the complainant. Thus, the city may withhold the information you have marked, in addition to the information you have indicated within the remaining video recordings not subject to article 2.139 of the Code of Criminal Procedure, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, as the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The city may withhold Exhibit 3 under section 552.108(a)(1) of the Government Code. The city must withhold the information you have indicated within the remaining video recordings not subject to article 2.139 of the Code of Criminal Procedure under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must withhold the motor vehicle record information you have marked, in addition to the motor vehicle record information you have indicated within the remaining video recordings not subject to article 2.139 of the Code of Criminal Procedure, under section 552.130 of the Government Code. The city may withhold the information you have marked, in addition to the information you have indicated within the remaining video recordings not subject to article 2.139 of the Code of Criminal Procedure, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must release the remaining information, including the information we have indicated pursuant to article 2.139 of the Code of Criminal Procedure.⁶

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 <http://www.texasattorneygeneral.gov/open/>

⁶Because the requestor has a special right of access to some of the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor. *See* Crim. Proc. Code. Art 2.139; Gov't Code § 552.023(a) (person or 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 is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

[ori_ruling_info.shtml](#), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Cole Hutchison". The signature is written in a cursive, somewhat stylized font.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 624628

Enc. Submitted documents

c: Requestor
(w/o enclosures)