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ATTORNEY GENERAL OF TEXAS

May 22, 2017

Ms. Lee I. Correa
Counsel for Hopkins County
Flowers Davis, P.L.L.C.
1021 East Southeast Loop 323, Suite 200
Tyler, Texas 75701

OR2017-11057

Dear Ms. Correa:

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# 658636.

The Hopkins County Sheriff's Department (the "sheriff's department"), which you represent, received a request for information pertaining to a specified incident. You state the sheriff's department has released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. This section encompasses information made confidential by other statutes. We note a portion of the submitted information consists of a recording from a department officer's body worn camera. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code provides:

(a) 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). We note the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recording at issue. The recording at issue reflects it was required to be made by law or the policies of the sheriff's department and relates to a law enforcement purpose. *See* Occ. Code § 1701.661(h). Further, you have failed to demonstrate the recording at issue could not be used as evidence in a criminal prosecution. *See id.* § 1701.661(d) (stating information "that is or could be used as evidence in a criminal prosecution is subject to the requirements of [the Act.]"). Additionally, we have no indication the body worn camera recording documents an incident that involves the use of deadly force by an officer or relates to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). The body worn camera recording demonstrates it was not made in a private space for the purposes of section 1701.661(f). *See id.* §§ 1701.661(f), .651(3) (defining "private space" for purposes of section 1701.661(f)). We note, further, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion . . . of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

Id. § 1701.661(f). Upon review, we find the submitted recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest and, thus, no portion of the recording is confidential under section 1701.661(f) and it may not be withheld under section 552.101 on that basis. Accordingly, we will address the applicability of sections 552.117 and 552.130 to the body worn camera recording at issue as well as the remaining information.¹

Section 552.117(a)(2) of the Government Code exempts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the sheriff's department must withhold those portions of the remaining information we have indicated under section 552.117(a)(2). We note section 552.117(a)(2) protects a peace officer's personal cellular telephone number only if the officer pays for the cellular telephone or pager service with his personal funds. *See* Open

¹This office will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Records Decision Nos. 670 at 6 (2001) (Gov't Code § 552.117(a)(2) excepts from disclosure peace officer's cell phone or pager number if officer pays for cell phone or pager service), 506 at 5-6. To the extent the officer's cellular telephone number belongs to a peace officer, the sheriff's department must withhold this information under section 552.117(a)(2) of the Government Code if the peace officer at issue pays for the cellular telephone service with his own funds. Conversely, to the extent the cellular telephone number we indicated does not belong to a peace officer or the sheriff's department pays for the cellular telephone service, the sheriff's department may not withhold this information under section 552.117(a)(2).

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. Accordingly, the sheriff's department must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

In summary, the sheriff's department must withhold the information we indicated under section 552.117(a)(2) of the Government Code; however, the sheriff's department may only withhold the cellular telephone number at issue if the peace officer at issue pays for the cellular telephone service with his own funds. The sheriff's department must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. The sheriff's department must release the remaining information.

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/orl_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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 658636

Enc. Submitted documents

c: Requestor
(w/o enclosures)