



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 30, 2017

Mr. Jonathan T. Koury
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2017-11700

Dear Mr. Koury:

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# 659679.

The City of Bryan (the "city") received a request for information related to case number 17-0300008. The city states it is releasing some of the requested information, including the police officer's crash report pursuant to section 550.065(c) of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions the city claims 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. The submitted information includes recordings from body worn cameras of officers of the

¹Although the city does not raise section 552.130 of the Government Code in its brief, we understand the city to raise this exception based on its markings.

city's police department (the "department"). 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 recordings at issue. The city states the submitted recordings were required to be made by law or the policies of the department and relate to a law enforcement purpose. *See* Occ. Code § 1701.661(h). The city states the submitted body worn camera recordings could 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 recordings document an incident that involves the use of deadly force by an officer or relate to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). The submitted recordings demonstrate they were 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, however, 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). The city informs us the submitted recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. The city also states the department has not received written authorizations for release from all of the subjects of the recording. Accordingly, the submitted body worn camera recordings are confidential and must be withheld under section 552.101 in conjunction with section 1701.661(f) of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). Thus, with the exception of the requestor's clients' dates of birth, to which the requestor has a right of access pursuant to section 552.023 of the Government Code, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *See Gov't Code* § 552.023(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).

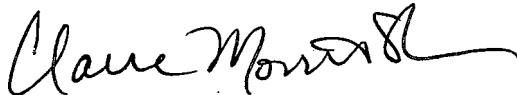
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her clients' motor vehicle record information under section 552.023 of the Government Code and such information may not be withheld from this requestor under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, with the exception of the requestor's clients' motor vehicle record information, the city must withhold the motor vehicle record information it marked under section 552.130 of the Government Code.

In summary, the city must withhold the submitted body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. With the exception of the requestor's clients' dates of birth, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor's clients' motor vehicle record information, the city must withhold the motor vehicle record information it marked under section 552.130 of the Government Code. The city 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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 659679

Enc. Submitted documents

c: Requestor
(w/o enclosures)