



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2017

Ms. Kristen Mills
Ms. Amanda Pell
Open Records Specialists
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2017-14265

Dear Ms. Mills and Ms. Pell:

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# 663391 (PIR Nos. 8525, 8532, 8754, and 8985).

The Baytown Police Department (the "department") received four requests for information related to a specified incident from three requestors.¹ You state you have released some information. We understand the department does not have information responsive to a portion of the request.² You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.1085, 552.117, 552.1175, 552.130

¹You state the third requestor modified his request in response to a cost estimate. *See* Gov't Code § 552.263(e-1) (modified request is considered received on the date the governmental body receives the written modification).

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note the information we have indicated is not responsive to the instant request for information because it is not related to the specified incident. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

Next, we note the information responsive to the first and third requestors includes a 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 provides, in relevant part, the following:

(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). In this instance, the third requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recording at issue was not properly requested by the third requestor pursuant to chapter 1701, our ruling does not reach this information as to the third requestor and it need not be released to the third requestor. However, pursuant to section 1701.661(b), a "failure to provide all the information required by [s]ubsection (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). As the first requestor did provide the requisite information under section 1701.661(a), we will address your arguments for the body worn camera recording as to the first requestor.

Section 552.108(a)(2) of the Government Code excepts from disclosure information dealing with the detection, investigation, or prosecution of crime only in relation to an investigation

³We 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 those records contain substantially different types of information than that submitted to this office.

that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the information you have marked and indicated relates to a concluded case that did not result in a conviction or deferred adjudication. Based on the department's representation, we conclude section 552.108(a)(2) is applicable to the information at issue. Thus, the department may withhold the information you have marked and indicated under section 552.108(a)(2) of the Government Code.⁴

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 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 court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Upon review, the department must withhold the information you have marked under section 552.1175 if the individuals to whom the information pertains are still licensed peace officers and they elect to restrict access to their information in accordance with section 552.1175(b).

Section 552.130 of the Government Code 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. *Id.* § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

⁴As our ruling is dispositive to the information at issue, we need not address the department's remaining arguments against disclosure of this information.

Section 552.137 of the Government Code 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).⁵ *See id.* § 552.137(a)-(c). Upon review, we find the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You state the remaining information you marked reveals the identities of department special operations and undercover officers working throughout the city. You state release of this information would jeopardize the safety of the officers and subject them to a substantial threat of physical harm. Based on your representations and our review, we find you have demonstrated the release of the information at issue would subject the officers at issue to a substantial threat of harm. Thus, the department must withhold the information you have marked under section 552.152 of the Government Code.

In summary, pursuant to section 1701.661(a) of the Occupations Code, the submitted body worn camera recording was not properly requested by the third requestor pursuant to chapter 1701 of the Occupations Code and need not be released to the third requestor. The department may withhold the information you have marked and indicated under section 552.108(a)(2) of the Government Code. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked under section 552.1175 if the individuals to whom the information pertains are still licensed peace officers and they elect to restrict access to their information in accordance with section 552.1175(b). The department must withhold the motor vehicle record information you have marked 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 affirmatively consent to their public disclosure. The department must withhold the information you have marked under section 552.152 of the Government Code. The department must release the remaining information.

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 663391

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)