



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 5, 2017

Mr. Peter G. Smith  
City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2017-14912

Dear Mr. Smith:

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# 664698 (Reference No. 17-302).

The City of Richardson (the "city"), which you represent, received a request for a call card and body worn camera recordings for a specified incident. We understand you have released some information. You also state the city will redact certain information pursuant to Open Records Letter No. 2017-00069.<sup>1</sup> You claim the submitted information is not subject to disclosure pursuant to section 1701.661(f) of the Occupations Code. We have considered your argument 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 the submitted information consists of recordings from two city police department

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<sup>1</sup>Open Records Letter No. 2017-00069 is a previous determination issued to the city authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

officers' body worn cameras. 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 submitted recordings reflect they were required to be made by law or the policies of the city's police department and relates to a law enforcement purpose. *See* Occ. Code § 1701.661(h). We also understand the recording at issue is or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). 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). We note, however, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion of a recording made in a private space, or 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 portions of the submitted video recordings were made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). The city does not indicate it has permission for release from the subject of the recordings made in the private space. *See id.* § 1701.661(f). Accordingly, we find the city must withhold the information we indicated under section 552.101 in conjunction with section 1701.661(f). With respect to the remaining body worn camera recordings, we are unable to determine whether the recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, we must rule conditionally. If the remaining recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, we note there is no indication the city has received a written authorization for release from the subject of the recording. Accordingly, in this instance, the remaining recordings are confidential and

must be withheld under section 552.101 in conjunction with section 1701.661(f). However, if the remaining recordings do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, no portion of the remaining recordings are confidential under section 1701.661(f) and it may not be withheld under section 552.101 on that basis. In that instance, we will address the applicability of sections 552.101 and 552.130 of the Government Code to the remaining information.<sup>2</sup>

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

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 city must withhold the discernible license plates under section 552.130 of the Government Code.

In summary, we find the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the remaining recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the city must withhold the remaining recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the remaining recordings do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the city must: (1) withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the discernible license plates in the remaining recordings under section 552.130 of the Government Code; and (3) release the remaining information.

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<sup>2</sup>The 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](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,



Jahna Ward  
Attorney  
Open Records Division

JW/som

Ref: ID# 664698

Enc. Submitted documents

c: Requestor  
(w/o enclosures)