



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 1, 2017

Ms. Charla Thomas  
Deputy City Attorney  
Legal Department  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2017-20054

Dear Ms. Thomas:

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# 674561.

The City of Temple (the "city") received a request for ten categories of information relating to a specified accident. 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.

Initially, we note the submitted information includes police officers' body worn camera recordings. 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 requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, 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 [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). We note the remaining information you indicated consists of dashboard camera recordings from city police department vehicles. We find this information does not consist of a body worn camera recording. Therefore, the remaining information you indicated is not subject to section 1701.661 of the Occupations Code and the city may not withhold any portion of the remaining video recordings under section 552.101 of the Government Code on that basis.

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 section 181.006 of the Health and Safety Code. Section 181.006 states that:

For a covered entity that is a governmental unit, an individual’s protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2) defines “[c]overed entity,” in part, as “any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

*Id.* § 181.001(b)(2)(A). You do not inform us the city is a covered entity for purposes of section 181.006 of the Health and Safety Code. Thus, we find you have failed to demonstrate any portion of the information at issue is subject to section 181.006 of the Health and Safety Code, and the city may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides, in relevant part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

*Id.* § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091. Upon review, we find Exhibit C constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, with the exception of the information subject to section 773.091(g), the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety 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 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.). Upon review, we find the submitted dashboard camera recordings contain the dates of birth of public citizens. Thus, the city must withhold all audible public citizens’ dates of birth from the submitted dashboard camera recordings 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 a personal

identification document issued by an agency of this state or another state or country is excepted from public release.<sup>1</sup> Gov't Code § 552.130. Upon review, we find the submitted dashboard camera recordings contain information subject to section 552.130. Accordingly, the city must withhold the discernible license plates in the dashboard camera recordings under section 552.130 of the Government Code.

In summary, as the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. With the exception of the information subject to section 773.091(g), the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must withhold all audible public citizens' dates of birth from the submitted dashboard camera recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the discernible license plates in the dashboard camera recordings 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](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

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<sup>1</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).

Ref: ID# 674561

Enc. Submitted documents

c: Requestor  
(w/o enclosures)