



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2017

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

OR2017-29075

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# 688877.

The City of Temple (the "city") received a request for information pertaining to a specified incident. 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. Section 552.101 encompasses section 1701.661(a) of the Occupations Code, which provides as follows:

(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. We understand the submitted body camera recording was required to be made by law or the policies of the city's police department and the recording relates to a law enforcement purpose. *See id.* § 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). Additionally, we have no indication the 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 submitted 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, 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 states the video recordings in Exhibit C consist of body worn camera recordings involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. We note the city does not have permission for release from all of the subjects in the recording at issue. *See id.* Accordingly, we find the city must withhold the body worn camera video recording we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, we find the remaining video recording is not a body camera recording. Accordingly, the city may not withhold the remaining video recording in Exhibit C under section 552.101 on this 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.

Health & Safety Code § 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 the information in Exhibit B constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, except for the information subject to section 773.091(g), the city must withhold the information in Exhibit B under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.¹

Section 552.130 provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). Thus, the city must withhold the audible and discernible motor vehicle information in the remaining recordings in Exhibit C under section 552.130 of the Government Code.

In summary, the city must withhold the body worn camera video recording we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. Except for the information subject to section 773.091(g), the city must withhold the information in Exhibit B 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 the audible and discernible motor vehicle information in the remaining video recordings in Exhibit C under section 552.130 of the Government Code. The city must release the remaining information.

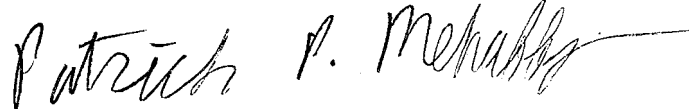
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 that reads "Patrick P. Mehaffy" with a long horizontal flourish extending to the right.

Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 688877

Enc. Submitted documents

c: Requestor
(w/o enclosures)