



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 8, 2019

Ms. Juanita Roland  
Records Technician  
Beaumont Police Department  
P.O. Box 3827  
Beaumont, Texas 77704

OR2019-00481

Dear Ms. Roland:

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# 745220.

The Beaumont Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor's client. You state the department has or will release some information to the requestor. You claim the submitted body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.1085 and 552.130 of the Government Code.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, the submitted information includes department 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:

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<sup>1</sup>We note the department failed to comply with section 552.301 of the Government Code in requesting a ruling; however, sections 552.101, 552.1085, and 552.130 of the Government Code can provide compelling reasons to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See Gov't Code* §§ 552.301(b), .302. We further note, the Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, such as section 552.101, but ordinarily will not raise other exceptions. *See Open Records Decision* Nos. 481 (1987), 480 (1987), 470 (1987). Accordingly, we consider the applicability of these exceptions.

(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).

Section 552.130 of the Government Code exempts from disclosure 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. The department asserts, and we agree, some of the remaining video recordings contain confidential motor vehicle record information that is excepted from disclosure under section 552.130. In this instance, the department states it does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the entireties of the video recordings we have indicated under section 552.130 of the Government Code.<sup>2</sup> *See* Open Records Decision No. 364 (1983).

Section 552.1085 of the Government Code provides, in relevant part, the following:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov’t Code § 552.1085(c). For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person's genitalia." *See id.* § 552.1085(a)(6). The department states the submitted photographs consist of sensitive crime scene images. We understand the photographs were taken at a crime scene as part of a criminal case that is now closed. Further, the department does not indicate any of the exceptions in section 552.1085 apply in this instance. Based on these representations and our review, we find the submitted photographs of the deceased individual consist of sensitive crime scene images for the purposes of section 552.1085. Therefore, the department must withhold the photographs of the decedent under section 552.1085(c) of the Government Code. However, we find none of the remaining photographs consist of sensitive crime scene images for the purposes of section 552.1085. Accordingly, the department may not withhold the remaining photographs under section 552.1085(c) of the Government Code.

Section 552.101 of the Government Code 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, 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 or 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 the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the submitted body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code and they need not be released. The department must withhold the entireties of the video recordings we have indicated under section 552.130 of the Government Code. The department must withhold the photographs of the decedent under section 552.1085(c) of the Government Code. The department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.<sup>3</sup>

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<sup>3</sup>We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

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,



Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/gw

Ref: ID# 745220

Enc. Submitted documents

c: Requestor  
(w/o enclosures)