



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 15, 2019

Mr. James Santangelo  
Assistant City Attorney  
City of Missouri City  
1522 Texas Parkway  
Missouri City, Texas 77489

OR2019-01264

Dear Mr. Santangelo:

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# 746041 (City ID No. MCAG 18-35).

The City of Missouri City (the "city") received a request for information pertaining to a specified incident. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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(a) provides:

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<sup>1</sup>We note the submitted information includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

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 give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.<sup>2</sup> However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (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).

Next, we must address the city’s obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov’t Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). We note the city received the instant request for information on October 10, 2018. You do not inform us the city was closed on any business days between October 10, 2018, and October 31, 2018. Accordingly, the city’s ten-business-day deadline for the request was October 24, 2018, and its fifteen-business-day deadline was October 31, 2018. However, the envelope in which the city submitted the information required under sections 552.301(b) and 552.301(e) was postmarked November 1, 2018. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or

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<sup>2</sup>As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

interagency mail). Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The city claims sections 552.101 and 552.130 of the Government Code for the submitted information. Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these sections for the submitted information. However, we find you have failed to establish a compelling reason to address the remaining exception you claim.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 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 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). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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 conclude some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked and indicated and, with the exception of the information we marked for release, the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude no portion of the remaining information at issue is confidential under common-law privacy, and the city may not withhold it under section 552.101 of the Government Code on that basis.

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. Upon review, we find the information we marked and indicated consists of motor vehicle record information subject to section 552.130. Therefore, the city must withhold the motor vehicle record information

we marked and indicated under section 552.130 of the Government Code. However, we find you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the city may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

Section 552.1175 of the Government Code excepts from disclosure 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.<sup>3</sup> *Id.* § 552.1175. Upon review, we find the information we indicated consists of personal information of an individual who may be among the types of individuals listed in section 552.1175(a). Thus, to the extent the information we indicated under section 552.1175 relates to an individual to whom section 552.1175(a) applies and the individual elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information we indicated under section 552.1175 of the Government Code. To the extent the individual whose information is at issue is not an individual to whom section 552.1175(a) applies or if no election is made, the city may not withhold the marked information under section 552.1175.

In summary, as the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The city must withhold the information we marked and indicated and, with the exception of the information we marked for release, the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked and indicated under section 552.130 of the Government Code. To the extent the information we indicated under section 552.1175 relates to an individual to whom section 552.1175(a) applies and the individual elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information we indicated under section 552.1175 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.

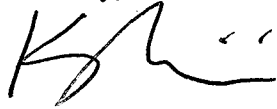
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

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<sup>3</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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[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,

A handwritten signature in black ink, appearing to read 'KH' followed by a stylized flourish.

Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/gw

Ref: ID# 746041

Enc. Submitted documents

c: Requestor  
(w/o enclosures)