



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 20, 2019

Mr. Russell F. Plackemeier
City Attorney
City of Texas City
P. O. Box 2608
Texas City, Texas 77592-2608

OR2019-07776

Dear Mr. Plackemeier:

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# 756582.

The City of Texas City (the "city") received a request for 9-1-1 audio recordings, dashboard camera recordings, and body camera recordings pertaining to a specified case number. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note the requestor only seeks video footage and audio recordings and you have submitted a police report in addition to the requested information. This information is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Next, we note the submitted information includes a police officer's body worn camera recording. 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 recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released.² 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).

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. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. Gov't Code § 552.301(e)(1).

You state the city received the request for information on January 7, 2019. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. We understand January 21, 2019, was a city holiday; therefore, the city's fifteen-business-day deadline was January 29,

²As we are able to make this determination, we need not address your argument against disclosure of this information.

2019. However, the envelope in which the city provided a copy of the request for information as required by section 552.301(e) was meter-marked March 8, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the city failed to comply with the requirements mandated by section 552.301(e).

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 section 552.108 of the Government Code for the information at issue. We find you have failed to establish a compelling reason to address this exception. However, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address this section for the information at issue.³

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The information at issue was used or developed in an investigation conducted under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities

³The 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).

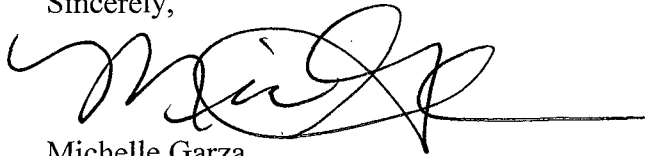
of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. The city does not indicate the city’s police department has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the city must withhold the remaining responsive information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In summary, as the body worn camera recording at issue was not properly requested 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 remaining responsive information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

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 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/jxd

Ref: ID# 756582

Enc. Submitted documents

c: Requestor
(w/o enclosures)