



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2019

Mr. Ricardo Gonzalez
Interim Deputy City Attorney
City of Mission
1201 East 8th Street
Mission, Texas 78572

OR2019-08379

Dear Mr. Gonzalez:

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# 756305 (Reference No. 19-0010).

The City of Mission (the "city") received two requests from the same requestor 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 552.108 and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. 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* Gov't Code § 552.301(b). You state the city received the first request for information on January 2, 2019. You do not inform us the city was closed on any business days between January 2, 2019, and January 16, 2019. Accordingly, the ten-business-day deadline for requesting a ruling from this office was January 16, 2019. The envelope in which the city submitted to this office the information required by section 552.301(b) was post-marked January 17, 2019. *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 interagency mail). Consequently, we find the city failed to comply with the requirements of section 552.301 of the Government Code as to the first request.

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). You claim sections 552.108 and 552.130 of the Government Code for the information responsive to the first request. However, we find you have failed to establish a compelling reason to address your claim under section 552.108 for the information responsive to the first request. Accordingly, the city may not withhold any of the information responsive to the first request under section 552.108 of the Government Code. *See Gov't Code* § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). However, we will address your argument under section 552.108 for the information responsive to the second request. Additionally, because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the information responsive to the first request.¹

Next, we note the information responsive to the second request consists of 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(a) provides:

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). Upon review, we find the requestor provided the requisite information under section 1701.661(a) for the body worn camera recording at issue. As the body worn camera recording was properly requested pursuant to chapter 1701 of the Occupations Code, we will address your argument against its disclosure.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

¹The 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).

prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted body worn camera recording relates to a pending criminal case, and release of the information would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted body worn camera recording. Accordingly, the city may withhold the submitted body worn camera recording under section 552.108(a)(1) 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.” Gov’t Code § 552.101. Section 552.101 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.). We note the remaining video recordings contain public citizens’ dates of birth. However, the requestor has a right of access to his own date of birth. *See* Gov’t Code § 552.023(a) (“person or a person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, with the exception of the requestor’s date of birth, the city must withhold all public citizens’ dates of birth in the remaining video 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 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. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code, and it may not be withheld from him under section 552.130. *See id.* § 552.023; ORD 481 at 4. Upon review, we find the remaining information contains confidential motor vehicle record information subject to section 552.130. Therefore, with the exception of any information belonging to the requestor, the city must withhold the information you marked and the information we indicated under section 552.130 of the Government Code.

In summary, the city may withhold the submitted body worn camera recording under section 552.108(a)(1) of the Government Code. With the exception of the requestor's date of birth, the city must withhold all public citizens' dates of birth in the remaining video recordings under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of any information belonging to the requestor, the city must withhold the information you marked and the information we indicated under section 552.130 of the Government Code. The city must release the remaining information.²

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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/mo

Ref: ID# 756305

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released in this instance. See Gov't Code § 552.023; ORD 481 at 4. Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.