



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2019

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

OR2019-09273

Dear Ms. Warren:

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# 758076.

The City of Temple (the "city") received a request for all records relating to a specified vehicle accident. You state the city has released some information. 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.

Initially, we note a portion of the submitted information, which we have indicated, is not responsive to the instant request because it does not pertain to the specified accident. 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. 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. This section encompasses information made confidential by other statutes. The submitted information contains 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 the following:

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 did not provide the requisite information under section 1701.661(a) for one of the body worn camera recordings at issue. As this body worn camera recording, which we have indicated, 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.¹ We note, 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). As the requestor did provide the requisite information under section 1701.661(a) for the remaining body worn camera recordings, we will address your argument for this information. The recordings at issue reflect they were required to be made by law or the policies of the city and relate to a law enforcement purpose. *See id.* § 1701.661(h). We understand the recordings are or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d) (stating information “that is or could be used as evidence in a criminal prosecution is subject to the requirements of [the Act.]”). Additionally, we have no indication the recordings document 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). We note, however, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion made in a private space, or 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). You state the recordings are 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. You state the city does not have permission for release from all subjects of the recordings. *See id.* § 1701.661(f). Accordingly, the city must withhold the

¹As we are able to make this determination, we need not address your argument against disclosure of the information at issue.

remaining body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, we note the remaining information consists of dash camera recordings from police vehicles. We find this information does not consist of body worn camera recordings. Therefore, this information is not subject to section 1701.661 of the Occupations Code, and the city may not withhold any portion of the remaining information on that basis.

Section 552.101 of the Government Code also 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 Third 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 find the information we indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we indicated and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects 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.² Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Thus, to the extent the information we indicated relates to licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code. If the individuals whose information is at issue are not currently licensed peace officers or do not elect to restrict access to the information in accordance with section 552.1175(b), the information at issue may not be withheld under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. *Id.* § 552.130(a)(1), (2). We note section

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

552.130 protects personal privacy. Accordingly, the requestor has a right of access to the motor vehicle record information of the requestor's client pursuant to section 552.023 of the Government Code. *See id.* § 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). Accordingly, the city must withhold the motor vehicle record information not belonging to the requestor's client under section 552.130 of the Government Code.

In summary, as one of the body worn camera recordings, which we have indicated, 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 body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The city must withhold the information we indicated and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we indicated relates to licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code. The city must withhold the motor vehicle record information not belonging to the requestor's client under section 552.130 of the Government Code. The city must release the remaining responsive 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Deborah Southerland
Attorney
Open Records Division

DS/gw

Ref: ID# 758076

Enc. Submitted documents

c: Requestor
(w/o enclosures)