



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 2, 2019

Ms. Mayra Gonzales
City Secretary
City of Galena Park
P.O. Box 46
Galena Park, Texas 77547

OR2019-10621A

Dear Ms. Gonzales:

Our office issued Open Records Letter No. 2019-10621 (2019) on April 22, 2019. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 22, 2019. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code).

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 779102.

The City of Galena Park (the "city") received a request for all video recordings depicting a named individual. You claim the submitted information is excepted from disclosure under

sections 552.101 and 552.103 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

You explain the city received a preservation letter including a request for information on December 20, 2018. However, you state “[t]he [c]ity disputes that the sentence provided the clarity to distinguish itself from the rest of the preservation letter necessary to communicate a document request was being made.” We disagree. A governmental body may require that a request for information be in writing because the governmental body’s duty to request a ruling from our office arises only on receipt of a written request for information. *See id.* § 552.301(a). However, any written communication that reasonably can be judged to be a request for public information is a request for information for purposes of the Act. *See Open Records Decision No. 44 at 2 (1974)*. The Act requires “no particular request form or ‘magic words’[.]” *Open Records Decision No. 483 at 2 (1987)*; *see Open Records Decision No. 497 at 3 (1988)*. In this instance, the requestor submitted his request stating “[w]e are specifically requesting any and all video recordings depicting [a named individual] while in [the city’s] custody.” Thus, we find the written communication provided to the city by the requestor can reasonably be judged as a request for public information for purposes of the Act.

We note 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 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

¹We note we asked the city to provide additional information pursuant to section 552.303 of the Government Code. *See Gov’t Code § 552.303(c)-(d)* (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the correspondence sent by the city pursuant to that request.

²We 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.

(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.³ 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 procedural 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), within ten business days after receiving a written request, a governmental body seeking to withhold requested public information must request a ruling from this office and state the exceptions to disclosure that apply. Gov’t Code § 552.301(b). As noted above, you acknowledge the city received the request for information on December 20, 2018. However, you submitted the information required under section 552.301 in an envelope meter-marked January 30, 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 section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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 552.103 of the Government Code for the remaining information. However, we find you have failed to establish a compelling reason to address your claim under section 552.103. Accordingly, no portion of the remaining information may be withheld under section 552.103 of the Government Code. However, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of section 552.101 to the remaining information.

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 section 418.182 of the Government Code, which was added

³As we are able to make this determination, we need not address your arguments against disclosure of this information.

to chapter 418 of the Government Code as part of the Texas Homeland Security Act (“HSA”). Section 418.182(a) of the Government Code provides in relevant part, “information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.” *Id.* § 418.182(a). The fact that information may be related to a governmental body’s security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The remaining information consists of surveillance camera video recordings from the city jail. You state the surveillance cameras at issue are part of the city jail’s security camera system, used to protect the public and city employees from threats, including terrorism. You state the submitted surveillance camera footage identifies the cameras’ coverage and “areas where there is a vulnerable gap in coverage,” as well as revealing technical information about the cameras. Upon review, we find the remaining information relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras’ capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.⁴

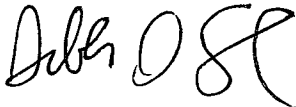
In summary, the submitted body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code and they need not be released. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government 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.

⁴As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

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,

A handwritten signature in black ink, appearing to read "Deborah Southerland". The signature is fluid and cursive, with the first name "Deborah" written in a larger, more prominent script than the last name "Southerland".

Deborah Southerland
Attorney
Open Records Division

DS/sb

Ref: ID# 779102

Enc. Submitted documents

c: Requestor
(w/o enclosures)