



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 30, 2019

Ms. Mary E. Miller  
Assistant District Attorney  
Denton County  
127 North Woodrow Lane, Suite 300  
Denton, Texas 76205

OR2019-11388

Dear Ms. Miller:

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# 762699 (Reference No. S001199-021119).

The Denton County Sheriff's Office (the "sheriff's office") received a request for call records, offense reports, body worn camera recordings, and 9-1-1 audio regarding a specified address and a named individual during a specified time period. You state the sheriff's office will release or has released some information to the requestor. You claim the requested body worn camera recordings were not properly requested under chapter 1701 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us some of the responsive information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-07620 (2019). In that ruling, we determined the sheriff's office must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code, and may withhold the remaining information under section 552.108(a)(2) of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the sheriff's office must continue to rely on Open Records Letter No. 2019-07620 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where

requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will address your arguments against disclosure of the submitted information.

Next, we note the requested information includes peace 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) of the Occupations Code 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). 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, our ruling does not reach this information and it need not be released. 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).

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. Section 552.101 encompasses information protected by section 261.201 of the Family Code, which provides, in part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You contend Exhibit B and Exhibit D are confidential under section 261.201. Upon review, we agree the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 as a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). We note the requestor claims she is the authorized representative of a parent of the child victims listed in the information at issue, but the parent is alleged to have committed the alleged abuse or neglect. Thus, the requestor does not have a right of access to the information at issue under section 261.201(k). *Id.* § 261.201(k). Accordingly, the sheriff’s office must withhold Exhibit B and Exhibit D in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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). This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). Upon review, we find some of the remaining information to be highly intimate or embarrassing and is not of legitimate

concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, the requestor knows the identity of the individual involved. Therefore, withholding only the individual's identity or certain details of the report from this requestor would not preserve the subject individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the sheriff's office must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup>

In summary, the sheriff's office must continue to rely on Open Records Letter No. 2019-07620 as a previous determination and withhold the identical information in accordance with that ruling. 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. The sheriff's office must withhold Exhibit B and Exhibit D in their entireties under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The sheriff's office must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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](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,



James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/jxd

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Ref: ID# 762699

Enc. Submitted documents

c: Requestor  
(w/o enclosures)