



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2019

Ms. Shelby Percy
Assistant City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2019-12248

Dear Ms. Percy:

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# 770604 (File No. P000709-031219).

The Richardson Police Department (the "department") received a request for information pertaining to two specified incidents. We understand you will withhold dates of birth pursuant to the previous determination issued in Open Records Letter No. 2017-00069 (2017).¹ You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the responsive information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-11566 (2019). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, we conclude the

¹Open Records Letter No. 2017-00069 is a previous determination issued to the Richardson Police Department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

department must continue to rely on Open Records Letter No. 2019-11566 as a previous determination and withhold or release any 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 that information is or is not excepted from disclosure). We will address your arguments against disclosure of the submitted information to the extent that it is not at issue in the prior ruling.

Next, we note the submitted information includes 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
- (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, the department need not release this information. 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 department’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. *See* Gov’t Code § 552.301. 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 id.* § 552.301(b). The department received the request for information on March 12, 2019. You do not inform us the department was closed for any business days between March 12, 2019 and March 26, 2019. This office does not count the date the request was received or holidays for purposes of calculating a governmental body’s deadlines under the Act. Accordingly, the department was

required to provide the information required by section 552.301(b) by March 26, 2019. However, the envelope in which you provided the information required by section 552.301(b) bears a postmark date of April 9, 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 conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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). We note section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of section 552.130 to the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exceptions.

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. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

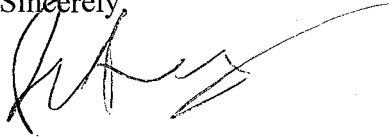
In summary, to the extent the submitted information is identical to the information previously requested and ruled upon, the department must continue to rely on Open Records Letter No. 2019-11566 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701, the department need not release this information. The department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read 'Jesse Harvey', with a long, sweeping horizontal stroke extending to the right.

Jesse Harvey
Assistant Attorney General
Open Records Division

JH/be

Ref: ID# 770604

Enc. Submitted documents

c: Requestor
(w/o enclosures)