



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2019

Ms. Shelby Pearcy
Counsel for City of Duncanville
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201

OR2019-12384

Dear Ms. Shelby Pearcy:

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# 764324 (Our File No. 106343).

The Duncanville Police Department (the "department"), which you represent, received a request for specified body worn camera and dashboard camera recordings. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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 information made confidential by statute,

¹We note the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information.

such as the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find you have not demonstrated any portion of the submitted information is subject to the MPA, and the department may not withhold any of the submitted information under section 552.101 on that basis.

We note some of the submitted information consists of video recordings subject to article 2.1396 of the Code of Criminal Procedure, which provides,

A person stopped or arrested on suspicion of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, is entitled to receive from a law enforcement agency employing the peace officer who made the stop or arrest a copy of any video made by or at the direction of the officer that contains footage of:

- (1) the stop;
- (2) the arrest;
- (3) the conduct of the person stopped during any interaction with the officer, including during the administration of a field sobriety test; or
- (4) a procedure in which a specimen of the person’s breath or blood is taken.

Crim Proc. Code art 2.1396. We note the requestor was stopped or arrested on suspicion of an offense under section 49.08 of the Penal Code and some of the submitted footage is subject to article 2.1396 of the Code of Criminal Procedure. *See* Penal Code § 49.08 (person commits offense if person is intoxicated and by reason of that intoxication causes the death of another by accident or mistake). Therefore, the requestor is entitled to receive a copy of the information at issue pursuant to article 2.1396 of the Code of Criminal Procedure. Although you assert the information at issue is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, a statutory right of access prevails over the common-law. *Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, the requestor's statutory access under article 2.1396 prevails over the department's arguments and the department may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. Therefore, with exception of the information we have indicated, the department must release the submitted information pursuant to article 2.1396 of the Code of Criminal Procedure.

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.² Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code.

In summary, with exception of the information we have indicated, the department must release the submitted information pursuant to article 2.1396 of the Code of Criminal Procedure. The department must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code. The department must release the remaining information.

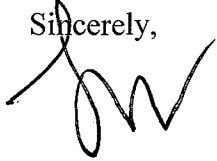
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

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

[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 be 'Jahna Ward', written over the word 'Sincerely,'.

Jahna Ward
Assistant Attorney General
Open Records Division

JW/gw

Ref: ID# 764324

Enc. Submitted documents

c: Requestor
(w/o enclosures)