



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2019

Ms. Nicole Dempsey
Assistant County & District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2019-17624

Dear Ms. Dempsey:

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# 772545.

The Ellis County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You state the sheriff's office released some information to the requestor. You state the sheriff's office does not have information responsive to part of the request.¹ You claim part of the submitted information was not properly requested pursuant to section 1701.661(a) of the Occupations Code. You claim some of the submitted information is excepted from disclosure under sections 552.1175 of the Government Code.² We have considered your arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, the submitted information includes a police officer's body worn camera recording. Body worn cameras are subject to chapter 1701 of the

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise for information not held in an employment context.

Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) 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 give the information required by section 1701.661(a). As the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information, and the sheriff's office need not release it. 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). We note the remaining video recordings consist of dashboard camera video recordings from sheriff's office vehicles. We find this information does not consist of body worn camera recordings. Therefore, the remaining video recordings are not subject to section 1701.661 of the Occupations Code. Accordingly, we will consider your remaining argument against disclosure of this 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 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). Upon review, we conclude the information we indicated meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Some of the remaining information, which we indicated, relates to a peace officer not employed by the sheriff's office. Accordingly, to the extent the officer at issue elects to restrict access to his information in accordance with section 552.1175(b), the sheriff's office must withhold the information we indicated under section 552.1175 of the Government Code. Conversely, if the officer at issue does not elect to restrict access to his information in accordance with section 552.1175(b), the sheriff's office may not withhold the information we indicated under section 552.1175 of the Government Code.

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.³ *See id.* § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

In summary, as the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach the recording and the sheriff's office need not release it. The sheriff's office must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

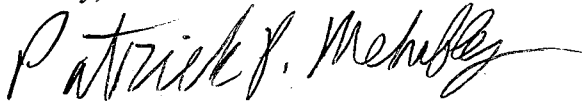
³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

To the extent the officer at issue elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold the information we indicated under section 552.1175 of the Government Code. The sheriff's office must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. The sheriff's office 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/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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/be

Ref: ID# 772545

Enc. Submitted documents

c: Requestor
(w/o enclosures)