



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2019

Ms. Charla Thomas
Assistant City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2019-17763

Dear Ms. Thomas:

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# 772152.

The City of Temple (the "city") received a request for body camera recordings and dash camera recordings for a specified incident. You claim the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. We have considered your arguments 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. This section encompasses information made confidential by other statutes. The submitted information includes recordings from a city police officer's body worn camera. Body worn camera recordings 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 give the requisite information under 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 it need not be released. 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 information, which consists of dashboard camera recordings, is not subject to section 1701.661 of the Occupations Code and the city may not withhold any portion of the remaining information on that basis.

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, the Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). We find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the public citizens’ dates of birth under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information in the submitted recordings contains information subject to section 552.1175 of the Government Code.¹ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. Upon review, we find the information we indicated consists of personal information of an individual who may be

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

among the types of individuals listed in section 552.1175(a) and who are employed by other law enforcement agencies. Thus, if the information we indicated under section 552.1175 relates to individuals whom section 552.1175 applies and the individuals elect to restrict access to the information in accordance with section 552.1175(b), then the city must withhold the information we indicated under section 552.1175 of the Government Code. If the individual at issue is not an individual to whom section 552.1175 applies or if no election is made, the city 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. *See id.* § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, with the exception of the information pertaining to the requestor, the city must withhold the motor vehicle record information in the remaining information under section 552.130 of the Government Code. However, the city has failed to demonstrate any of the remaining information is subject to section 552.130. Therefore, the city may not withhold any of the remaining information at issue 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 of the Occupations Code, our ruling does not reach this information and it need not be released. The city must withhold the public citizens' dates of birth under section 552.101 in conjunction with common-law privacy. If the individual at issue is an individual to whom section 552.1175 of the Government Code applies and he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we indicated under section 552.1175 of the Government Code. With the exception of the information pertaining to the requestor, the city must withhold the motor vehicle record information in the remaining information under section 552.130 of the Government Code. The city must release the remaining information.²

²We note the requestor has a right of access to some of the information being released. *See Gov't Code* § 552.023(a); ORD No. 481 at 4. Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

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,



Kimbell Kesling
Attorney
Open Records Division

KK/eb

Ref: ID# 772152

Enc. Submitted documents

c: Requestor
(w/o enclosures)