



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2019

Ms. Skye Masson
First Assistant City Attorney
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2019-18032

Dear Ms. Masson:

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# 772928 (PIR# G007527-041119).

The City of Georgetown (the "city") received a request for twenty-one categories of information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.1085, and 552.130 of the Government Code. Additionally, you state, and provide documentation showing, the city notified the next of kin of a deceased individual of the right to submit comments to this office explaining why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Initially, we note, and you acknowledge, the submitted information contains 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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

seeking a body worn camera recording. Section 1701.661(a) of the Occupations Code provides the following:

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 provides the requisite information under section 1701.661(a) for some of the body worn camera recordings at issue. As these body worn camera recordings were properly requested pursuant to chapter 1701 of the Occupations Code, we will consider your arguments against their disclosure, as well as against disclosure of the remaining information. However, because the requestor did not properly request the remaining body worn camera recordings, which we indicated, pursuant to chapter 1701, our ruling does not reach this information and it need not be released to the requestor.² We note, 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 552.1085 provides, in part, the following:

- (c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov’t Code § 552.1085(c). For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person’s genitalia.” *See id.* § 552.1085(a)(6). You state the information at issue consists of sensitive crime scene images. You also state the information at issue relates to a closed criminal case. Further, it

²As we are able to make this determination, we need not address the arguments against disclosure of this information.

appears none of the exceptions in section 552.1085 apply in this instance. Based upon your representations and our review, we agree some of the submitted photographs, which we indicated, consist of sensitive crime scene images for purposes of section 552.1085.³ Accordingly, the city must withhold the photographs we indicated under section 552.1085(c) of the Government Code. However, we find none of the remaining information consists of sensitive crime scene images for the purposes of section 552.1085, and the city may not withhold it on that basis.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See id.* § 552.130. Upon review, we find some of the remaining information contains motor vehicle record information. You state the city does not possess the technological capability to redact information from the recordings at issue. Accordingly, we find the city must withhold the entireties of the remaining recordings, and the additional information we indicated, under section 552.130 of the Government Code.⁴ *See* Open Records Decision No. 364 (1983).

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 the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). As noted above, you state the city notified the deceased individual's next of kin of the request for information and of the right to submit comments to this office. As of the date of this letter, we have not received any correspondence from any members of the deceased's family objecting to disclosure of the information at issue. Thus, we have no basis for determining the family's privacy interests in the information at issue. Therefore, we conclude the city

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

⁴As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

may not withhold the remaining information under section 552.101 of the Government Code on the basis of constitutional privacy.

In summary, as the body worn camera recordings we indicated 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 city must withhold the photographs we indicated under section 552.1085(c) of the Government Code. The city must withhold the entireties of the remaining recordings and the information we indicated under section 552.130 of the Government Code. The city 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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/be

Ref: ID# 772928

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)