



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 2, 2019

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

OR2019-18234

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# 773218.

The City of Temple (the "city") received a request for all information pertaining to a specified accident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes a city police officer's 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, 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 [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). We note the remaining video recordings consist of dashboard camera recordings from a city police department vehicle. We find this information does not consist of a body worn camera recording. Therefore, the remaining video recordings are not subject to section 1701.661 of the Occupations Code. Accordingly, we will consider whether this information is otherwise excepted from disclosure under the Act.

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 of the Government Code encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services [(“EMS”)] personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). The remaining information includes records made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to Exhibit C. Thus, with the exception of the information subject to section 773.091(g), which is not confidential and must be released, the city must withhold Exhibit

C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.101 also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). Thus, the city must withhold all audible public citizens' dates of birth from the submitted dashboard camera recordings under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ 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 city must withhold all audible and visible license plate numbers in the submitted dashboard camera recordings under section 552.130 of the Government Code.

In summary, as the body worn camera recordings at issue were not properly requested pursuant to chapter 1701, our ruling does not reach this information and it need not be released. With the exception of the information subject to section 773.091(g), which must be released, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must withhold all audible public citizens' dates of birth in the submitted dashboard camera recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold all audible and visible license plate numbers in the submitted dashboard camera recordings 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/>

¹ The 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 that reads "Kimbell Kesling". The signature is fluid and cursive, with a large loop at the end of the last name.

Kimbell Kesling
Attorney
Open Records Division

KK/gw

Ref: ID# 773218

Enc. Submitted documents

c: Requestor
(w/o enclosures)