



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2019

Mr. Christopher Gregg
Counsel for the City of Shoreacres
Gregg & Gregg, P. C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2019-18752

Dear Mr. Gregg:

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# 774764.

The City of Shoreacres (the "city"), which you represent, received a request for any audio, video, or paperwork information pertaining to two specified incidents on specified dates, including information regarding a specified criminal charge. You state the city released some information to the requestor, some of which with redactions pursuant to section 552.130(c) of the Government Code and Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information includes peace officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

Chapter 1701 provides the procedures a requestor must follow when 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 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 of the Occupations Code, our ruling does not reach this information and it need not be released.² 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).

Section 552.108(a) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state case number 2019-0065 pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based upon your representation, we agree section 552.108(a)(2) is applicable to case number 2019-0065.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with

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

the exception of basic information, the city may withhold case number 2019-0065 under section 552.108(a)(2) of the Government Code.³

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 Gov't Code* § 552.130. Upon review, we find some of the remaining video recordings contain confidential motor vehicle record information. You state the city does not have the technological capability to redact the motor vehicle record information from the recordings. Accordingly, the city must withhold the recordings we indicated in their entirety under section 552.130 of the Government Code.⁴ *See Open Records Decision No. 364 (1983)*. However, we find you 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 under section 552.130 of the Government Code.

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 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. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. *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.). Upon review, we find you failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *See Gov't Code* § 552.147. Upon review, we find you failed to demonstrate section 552.147 is applicable to any of the remaining information. Therefore, the city may not withhold any of the remaining information under section 552.147 of the Government Code.

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

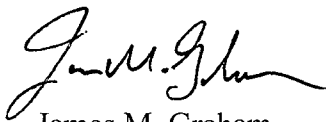
⁴As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

In summary, as the body worn camera recordings at issue 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. With the exception of basic information, which must be released, the city may withhold case number 2019-0065 under section 552.108(a)(2) of the Government Code. The city must withhold the recordings we indicated in their entirety 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/jxd

Ref: ID# 774764

Enc. Submitted documents

c: Requestor
(w/o enclosures)