



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 11, 2019

Mr. Nicholas Toulet  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79701

OR2019-18817

Dear Mr. Toulet:

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# 774604 (Request ID Nos. M026464-042619, M026483-043019, and M026646-051419).

The City of Midland (the "city") received four requests from different requestors for information related to a specified accident. You state the city has released some information. You claim the submitted body worn camera recordings were not properly requested pursuant to section 1701.661(a) of the Occupations Code. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information consists of police 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 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 requestors do not give the requisite information under section 1701.661(a). As the requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.<sup>1</sup> 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).

Next, we must address the city’s procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general’s decision and state the exceptions that apply within ten business days after receiving the request. *See Gov’t Code* § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the city received the first request for information on April 16, 2019. We note the city was closed on April 19, 2019. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body’s deadlines under the Act. Accordingly, the city’s ten-business-day deadline was May 1, 2019. However, the envelope in which you submitted the information under section 552.301(b) bears a post meter mark of May 2, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Accordingly, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The city claims sections 552.101 and 552.108 of the Government Code for the submitted information. However, we find the city has failed to establish a compelling reason to address its section 552.108 exception to disclosure of the submitted information, and the city may not withhold any of the submitted information under section 552.108 in response to the first request. We note in waiving section 552.108 for the information at issue with respect to the first request, the city also waived its claim for the same information with respect to the remaining requests for information. *See Gov’t Code* § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections for the submitted information.<sup>2</sup>

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<sup>1</sup>As we are able to make this determination, we need not address your argument(s) against disclosure of this information.

<sup>2</sup>The 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).

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 information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release information subject to section 550.065 in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1)). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the second and fourth requestors are persons listed under section 560.065(c). *See id.* § 550.065(c)(4)(G). Thus, section 550.065(c) generally requires the accident report to be released to these requestors. However, we have no indication the remaining requestors are persons listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b) with respect to the remaining requestors, and the city must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the city to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the remaining requestors have a right of access to the redacted accident report. Thus, the city must release the accident report to the second and fourth requestors pursuant to section 550.065(c) of the Transportation Code and must release the redacted accident report to the first and third requestors pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.101 of the Government Code 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. *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 public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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. We note the dashboard camera video recording contains motor vehicle record information subject to section 552.130. Thus, the city must withhold any audible or visible license plate information in the dashboard camera video recording under section 552.130 of the Government Code.

In summary, as the requestors did not properly request the body worn camera recordings 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 release the accident report to the second and fourth requestors pursuant to section 550.065(c) of the Transportation Code. The city must withhold the submitted accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; but must release the redacted accident report to the first and third requestors pursuant to section 550.065(c-1) of the Transportation Code. The city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold any audible or visible license plate information in the dashboard camera video recording 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](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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/gw

Ref: ID# 774604

Enc. Submitted documents

c: 4 Requestors  
(w/o enclosures)