



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2019

Mr. Russell F. Plackemeier
City Attorney
City of Texas City
P.O. Box 2608
Texas City, Texas 77592-2608

OR2019-18849

Dear Mr. Plackemeier:

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# 774690.

The City of Texas City (the "city") received a request for information pertaining to a specified incident.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note some of the submitted information, which we marked, is not responsive to the present request for information because it was created after the date the request was received by the city. This ruling does not address the public availability of non-responsive information and the city is not required to release such information, which we marked, in response to the present request.

¹As you did not submit a copy of the requestor's written request for information, we take our description from your brief to this office.

²We 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 those records contain substantially different types of information than that submitted to this office.

Next, we note the submitted responsive information includes a video recording from a city police officer's body worn camera. 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(a) provides:

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, we are not able to determine whether the requestor provided the requisite information under section 1701.661(a). Thus, we rule in the alternative. To the extent the requestor did not give the requisite information under section 1701.661(a), the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code. In that instance, our ruling does not reach this information and the city need not release it.³ 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). To the extent the requestor did provide the requisite information under section 1701.661(a), we will consider your argument against disclosure of this information.

Next, we must address the city's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedural obligations a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving a request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You state the city received the present request for information on April 25, 2019. You do not inform us the city was closed for any business days between April 25, 2019, and May 16, 2019. Thus, the city's fifteen-business-day deadline was May 16, 2019. However, the envelope in which the city provided the information required by section 552.301(e) was postmarked May 22,

³As we are able to make this determination, we need not address your argument against disclosure of this information.

2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Moreover, as of the date of this letter, the city has not submitted to this office a copy of the written request for information. Consequently, we find the city has failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (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). You raise section 552.108 for the information at issue. However, we find you have failed to establish a compelling reason to address your argument under this section. We note portions of the submitted responsive information are subject to sections 552.101 and 552.130 of the Government Code.⁴ Because these sections make information confidential and thus provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the submitted responsive 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. As noted above, the submitted responsive information contains a city police officer's body worn camera recording, which is subject to chapter 1701 of the Occupations Code. To the extent the body worn camera recording at issue was properly requested pursuant to section 1701.661(a), we will consider whether the recording at issue is excepted from disclosure under chapter 1701 of the Occupations Code. The recording at issue reflects it was required to be made by law or the policies of the city and relates to a law enforcement purpose. *See id.* § 1701.661(h). We understand the recording is or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d) (stating information “that is or could be used as evidence in a criminal prosecution is subject to the requirements of [the Act.]”). Additionally, we have no indication the recording at issue documents an incident that involves the use of deadly force by an officer or relates to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). We note, however, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion . . . of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

⁴The 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).

Id. § 1701.661(f). Upon review, we find a portion of the body worn camera recording at issue was made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661 (f)). We have no indication the city has authorization for release from the subjects of the portion of the recording made in the private space. *See id.* § 1701.661(f). Accordingly, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations 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 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.). Accordingly, the city must withhold all audible and visible dates of birth within the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

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. Accordingly, the city must withhold all audible and visible license plates, registration stickers, and driver’s license information within the remaining recording at issue and the information we marked under section 552.130 of the Government Code.

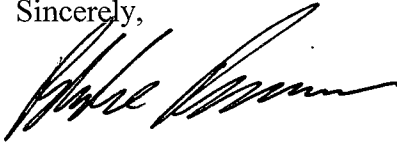
In summary, to the extent the requestor did not give the requisite information under section 1701.661(a) of the Occupations Code, the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code and the city need not release it. To the extent the body worn camera recording at issue was properly requested pursuant to section 1701.661(a), the city: (1) must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code; (2) must withhold all audible and visible dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (3) must withhold all audible and visible license plates, registration stickers, and driver’s license information; and (4) must release the remaining recording at issue.⁵ Nevertheless, the city: (1) must withhold the dates of birth of public citizens within the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy; (2) must withhold the information we marked under section 552.130 of the Government Code; and (3) must release the remaining information.

⁵We note the remaining recording at issue includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *Gov’t Code* § 552.147(b).

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,



Blake Brennan
Attorney
Open Records Division

BB/gw

Ref: ID# 774690

Enc. Submitted documents

c: Requestor
(w/o enclosures)