



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 16, 2019

Mr. Jonathan T. Koury  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2019-19280

Dear Mr. Koury:

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# 775147.

The City of Bryan (the "city") received a request for fourteen categories of information pertaining to a specified accident. The city states it has released some information to the requestor. The city claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted representative sample of information.<sup>1</sup>

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. The submitted information contains video recordings from city police officers' body worn cameras. 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:

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<sup>1</sup>We 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.

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). Upon review, we find the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the submitted body worn camera recordings. We understand the recordings at issue were required to be made by law or the policies of the city's police department and the recording relates to a law enforcement purpose. *See id.* § 1701.661(h). Further, we understand the recordings are or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Additionally, we have no indication the recordings document an incident that involves the use of deadly force by an officer or relate to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). However, section 1701.661(f) provides:

A law enforcement agency may not release any portion of a recording made in a private space, or 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.

*Id.* § 1701.661(f). Upon review, we find portions of the submitted video recordings were made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). Furthermore, the city states the recordings at issue are body worn camera recordings involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. The city states it does not have written authorizations for release from the subjects of the portions of the recordings made in the private space or all the subjects of the remaining portions of the recordings. *See id.* § 1701.661(f). Accordingly, the body worn camera recordings submitted as Exhibit C are confidential and must be withheld in their entirety under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

Section 552.108 of the Government Code states, in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted [from required public disclosure] if:

...

4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4). Section 552.108(a)(4) protects information that was prepared by an attorney for the state for litigation or that reflects an attorney's legal reasoning. A governmental body claiming an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The city states the information in Exhibit B reflects the mental impressions or legal reasoning of attorneys representing the state. Upon review, we agree some of the information at issue reflects the mental processes or legal reasoning of an attorney representing the state and thus subject to section 552.108(a)(4) of the Government Code. Accordingly, the city may withhold the information we marked in Exhibit B under section 552.108(a)(4) of the Government Code.<sup>2</sup> However, upon review, we find the city has failed to demonstrate the remaining information in Exhibit B was prepared by the city in anticipation of or in the course of preparing for criminal litigation or represents the mental impression or legal reasoning of an attorney representing the state. Thus, the city may not withhold the remaining information at issue under section 552.108(a)(4) of the Government Code.

Section 552.101 of the Government Code also 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.

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

(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 city informs us the information submitted as Exhibit D consists of records made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to the information at issue. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the city must withhold the EMS records submitted as Exhibit D under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety 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.). Thus, the city must withhold all public citizens' dates of birth in Exhibit B 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.<sup>3</sup> 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 the motor vehicle record information we marked in Exhibit B under section 552.130 of the Government Code.

In summary, the body worn camera recordings submitted as Exhibit C are confidential and must be withheld in their entireties under section 552.101 of the Government Code in

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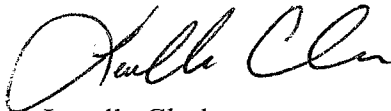
<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

conjunction with section 1701.661(f) of the Occupations Code. The city may withhold the information we marked in Exhibit B under section 552.108(a)(4) of the Government Code. Except for the information subject to section 773.091(g), the city must withhold the EMS records submitted as Exhibit D 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 public citizens' dates of birth in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked in Exhibit B 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,



Lecelle Clarke  
Attorney  
Open Records Division

LC/mo

Ref: ID# 775147

Enc. Submitted documents

c: Requestor  
(w/o enclosures)