



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 14, 2019

Ms. M. Ann Montgomery
First Assistant County & District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165

OR2019-22486

Dear Ms. Montgomery:

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# 780667.

The Ellis County Sheriff's Office (the "sheriff's office") received two requests from different requestors for information pertaining to a specified case. You claim the submitted body worn camera recordings were not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the first requestor seeks peace 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(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 first requestor does not provide the requisite information under section 1701.661(a). As the first requestor 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 to the first requestor.¹ 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)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information you marked relates to a pending criminal investigation. Based upon this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude section 552.108(a)(1) is applicable to the information at issue, and the sheriff’s office may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code.²

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. *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. *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.). Accordingly, the sheriff’s office must withhold the public citizen’s date of birth you marked from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

¹As we are able to make this determination, we need not address the arguments against disclosure of this information.

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

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, with the exception of the information we marked for release, the sheriff's office must withhold the motor vehicle record information you marked, and the additional motor vehicle record information we marked, from the first requestor under section 552.130 of the Government Code. However, we find you failed to demonstrate any of the remaining information is subject to section 552.130. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body[,]" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Accordingly, the sheriff's office must withhold the e-mail address you marked from the first requestor under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, as the first requestor 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 to the first requestor. The sheriff's office may withhold the remaining information you marked under section 552.108(a)(1) of the Government Code. The sheriff's office must withhold the public citizen's date of birth you marked from the first requestor under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the sheriff's office must withhold the motor vehicle record information you marked and we marked from the first requestor under section 552.130 of the Government Code. The sheriff's office must withhold the e-mail address you marked from the first requestor under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The sheriff's office must release the remaining information.³

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.

³We note the information being released contains information to which the second requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the sheriff's office receives another request for this same information from a different requestor, the sheriff's office must again seek a ruling from this office.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 780667

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)