



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2019

Ms. Erin J. Onyon
Open Records Manager
City of Mansfield
1200 East Broad Street
Mansfield, Texas 76063

OR2019-23262

Dear Ms. Onyon:

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# 781789 (Reference No. 740-2019).

The City of Mansfield (the "city") received a request for specified body worn camera recordings.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 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."² 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. In Open Records

¹You state the city sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615.

²The 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).

Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find a portion of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. You state the city does not have the technological capability to redact information from the video recordings at issue. Thus, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.³ *See* Open Records Decision No. 364 (1983).

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. Gov't Code § 552.130. Upon review, we find some of the remaining video recordings contain information subject to section 552.130. As noted above, the city states it does not have the technological capability to redact information from the video recordings at issue. Accordingly, the city must withhold the information we have indicated under section 552.130 of the Government Code.⁴ *See* ORD 364.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov't Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See Open Records Decision No. 562 at 10 (1990)* (construing statutory predecessor). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g., Open Records Decision Nos. 531 (1989)* (release of detailed use of force guidelines would unduly interfere with

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

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law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

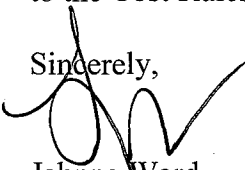
You argue the remaining information is subject to section 552.108(b)(1) of the Government Code. You state the remaining information consists of a video recording that reveals the layout of the city's law enforcement center. You assert release of this information "could jeopardize criminal investigations and impede an officer's ability to investigate criminal activity[.]" Upon review, we find you have demonstrated release of some of the information at issue would interfere with law enforcement. As noted above, the city states it does not have the technological capability to redact information from the video recording at issue. Therefore, the city may withhold the remaining information under section 552.108(b)(1) of the Government Code. *See* ORD 364.

In summary, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have indicated under section 552.130 of the Government Code. The city may withhold the remaining information under section 552.108(b)(1) of the Government Code.

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 <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,



Jahna Ward
Assistant Attorney General
Open Records Division

JW/be

Ms. Erin J. Onyon - Page 4

Ref: ID# 781789

Enc. Submitted documents

c: Requestor
(w/o enclosures)