



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 3, 2019

Ms. Jo Ann Pate
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2019-24490

Dear Ms. Pate:

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# 783755 (COFW PIR No. W086587).

The City of Fort Worth (the "city") received a request for information pertaining to a specified traffic fatality. The city states it will release most of the responsive information to the requestor. The city claims the requestor did not properly request the submitted body worn camera recordings pursuant to section 1701.661 of the Occupations Code. Further, the city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the city states, and provides documentation showing, it notified the surviving family members of the deceased individual of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹ 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

As previously noted the submitted information includes law enforcement 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 requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. 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 552.101 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 the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir.

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.

1985)). We note the right to privacy is a personal right that lapses at death and therefore may not be asserted solely on behalf of a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). However, the United States Supreme Court has determined that surviving family members can have a privacy interest in information relating to their deceased relatives. *See Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004).

As previously noted, the city states it has notified the surviving family members of the deceased individual of the request for information and of their right to assert a privacy interest in the information at issue. As of the date of this letter, we have not received any correspondence from a family member of the deceased individual. Thus, we have no basis for determining the family's privacy interest in the submitted information. Therefore, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with constitutional privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.² 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 all visible license plates in the remaining information under section 552.130 of the Government Code.

In summary, as the body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The city must withhold all visible license plates in the remaining information under section 552.130 of the Government Code. The city must release the remaining information.

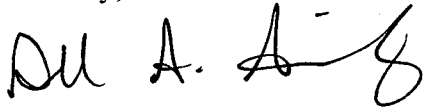
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read "Gerald Arismendez". The signature is fluid and cursive, with a prominent initial "G" and "A".

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 783755

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)