



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 9, 2019

Mr. Alexander Garcia
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2019-25078

Dear Mr. Garcia:

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# 784618 (CCPD File Number: 771).

The Corpus Christi Police Department (the "department") received a request for information pertaining to a specified open records letter ruling. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes police 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) 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, the requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.¹ 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).

Next, we note some of the information at issue was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-12750 (2019). In that ruling, we determined: with the exception of basic information, the department may withhold the information we marked under section 552.108(a)(1) of the Government Code; the department must withhold the following: (1) the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code; (2) the information we marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; (3) all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the information we marked under section 552.1175 of the Government Code if the individual at issue is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code; and the department must release the remaining information. However, as noted above, the requestor in this instance did not properly request the body worn camera recordings at issue. *See* Occ. Code § 1701.661(a). Therefore, the facts and circumstances have changed with respect to the body worn camera recordings at issue. Thus, the department may not rely on Open Records Letter No. 2019-12750 with respect to this information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we have no indication the law, facts, and circumstances on which the prior ruling was based have changed with respect to the remaining information at issue. Therefore, with the exception of the submitted body worn camera recordings, the department must continue to rely on Open Records Letter No. 2019-12750 as a previous determination and withhold or release the information previously requested and ruled upon by this office in accordance with that ruling.

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 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

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

private affairs in which the public has no legitimate concern. *Id.* at 682. The Third 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 department must withhold the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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).¹ Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the department must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its public disclosure or subsection (c) applies.

In summary, as the 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. With the exception of the body worn camera recordings at issue, the department must continue to rely on Open Records Letter No. 2019-12750 as a previous determination and withhold or release the information previously requested and ruled upon by this office in accordance with that ruling. The department must withhold the date of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its public disclosure or subsection (c) applies. The department 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 Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 'K Hillis', with a stylized flourish at the end.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/be

Ref: ID# 784618

Enc. Submitted documents

c: Requestor
(w/o enclosures)