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ATTORNEY GENERAL OF TEXAS

October 15, 2019

Mr. Michael W. Dixon
Counsel for the City of Hewitt
Haley & Olson, PC
100 North Ritchie Road, Suite 200
Waco, Texas 76712-8544

OR2019-28845

Dear Mr. Dixon:

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# 798877.

The City of Hewitt (the "city"), which you represent, received a request for a specified incident report. You claim the requestor did not properly request the submitted body worn camera recordings pursuant to section 1701.661 of the Occupations Code. You further claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information includes city police department 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, 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 [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 public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section 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. This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the information must be withheld in its entirety to protect the individual’s privacy. The requestor in this case knows the identity of the alleged victim in the remaining information. We believe in this instance, withholding only identifying information from the requestor would not preserve the victim’s common-law right to privacy. Therefore, we conclude the city must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.²

In summary, pursuant to section 1701.661 of the Occupations Code, our ruling does not reach the body worn camera recordings at issue and they need not be released. The city must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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

² As our ruling is dispositive, we need not address your argument against disclosure of this 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 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/be

Ref: ID# 798877

Enc. Submitted documents

c: Requestor
(w/o enclosures)