



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 19, 2019

Ms. Charla Thomas
Assistant City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2019-32634

Dear Ms. Thomas:

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# 797631

The City of Temple (the "city") received a request for fourteen categories of information pertaining to a specified motor vehicle accident. You claim 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 you have not submitted information responsive to all categories of the present request. To the extent information responsive to the remainder of the request existed on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information made confidential by other statutes. The submitted information includes recordings from city police department officers' body worn cameras. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code states the information a

requestor must provide when seeking a body worn camera recording. *See* Occ. Code § 1701.661(a). We note the requestor provides the requisite information for the body worn camera recordings at issue. However, we note section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion . . . of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

Id. § 1701.661(f). You state the submitted recordings pertain to the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. You also state you have not received a written authorization for release from all of the subjects of the recordings. *See id.* Accordingly, we find the city must withhold the body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services [{"EMS"}] personnel or a physician providing medical supervision and a patient that is made in the course of providing [EMS] to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by [EMS] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving [EMS].

Health & Safety Code § 773.091(a)-(b), (g). The city informs us Exhibit C consists of records made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to the information at issue. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the city must withhold the EMS records

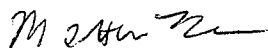
submitted as Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

In summary, the department must withhold the body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. With the exception of the information subject to section 773.091(g), which must be released, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/jxd

Ref: ID# 797631

Enc. Submitted documents

c: Requestor
(w/o enclosures)