



KEN PAXTON

ATTORNEY GENERAL OF TEXAS

December 5, 2019

Mr. Robert Carroll
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2019-34247

Dear Mr. Carroll:

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# 801485 (Ref. No. P000414-070319).

The City of Odessa (the "city") received a request for fourteen points of information pertaining to a specified car accident involving the requestor's client. You claim some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. In addition, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note submitted information includes city police officers' body worn camera recordings. Chapter 1701 of the Occupations Code 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). The city asserts the requestor does not give the requisite information under section 1701.661(a). Therefore, the city argues the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701. However, we find the instant request includes the information required by section 1701.661(a). *Id.* Accordingly, the requestor properly requested the body worn camera recordings at issue and we will consider the city's arguments against their disclosure.

Next, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The city states it received the request for information on July 3, 2019. We understand the city was closed for business on July 4, 2019. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the city was required to provide the information required by section 552.301(b) by July 18, 2019, and the information required by section 552.301(e) by July 25, 2019. However, the envelope in which the city provided the information required by sections 552.301(b) and 552.301(e) was postmarked October 3, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.¹

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Although the city claims section 552.101 of the Government Code in conjunction with the common-law informer's privilege and section 552.108 of the Government Code for portions of the submitted information, we find the city has failed to establish a compelling reason to address these arguments. However, because section 552.130 of the Government Code and

¹ We note the city also failed to comply with the 20-business-day and 25-business-day deadlines for the submitted body worn camera recordings under section 1701.662 of the Occupations Code. *See* Occ. Code § 1701.662.

your remaining arguments under section 552.101 can provide compelling reasons to overcome the presumption of openness, we will address section 552.130 and your arguments under section 552.101 for the submitted information.²

The submitted information includes an accident report subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. *See* Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c). In this instance, the requestor is a person listed under section 550.065(c). Thus, the city must release the accident report to this requestor pursuant to section 550.065(c) of the Transportation Code.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. As noted above, body worn cameras are subject to chapter 1701 of the Occupations Code and the requestor has provided the information required by section 1701.661(a) for release of the submitted body worn camera recordings. We note, however, 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). The city states the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and that did not result in an arrest. The city states it does not have permission for release from all of the subjects of the recordings at issue. *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 552.130 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

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).

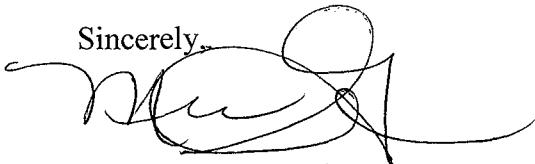
excepted from public release. *See* Gov't Code § 552.130. The city must withhold all visible license plates in the submitted dashboard camera recording under section 552.130 of the Government Code.

In summary, the city must release the accident report to this requestor pursuant to section 550.065(c) of the Transportation Code. 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. The city must withhold all visible license plates in the submitted dashboard camera recording under section 552.130 of the Government Code. The remaining information must be released.

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,



Michelle Garza
Assistant Attorney General
Open Records Division

MRG/mo

Ref: ID# 801485

Enc. Submitted documents

c: Requestor
(w/o enclosures)