



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 10, 2019

Ms. Chelsey Heil
Records Supervisor
City of Leander
705 Leander Drive
Leander, Texas 78641

OR2019-34845

Dear Ms. Heil:

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# 801041.

The Leander Police Department (the "department") received a request for information related to a specified incident. The department has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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 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 did not give the requisite information under section 1701.661(a) for some of the body worn camera recordings at issue. As the requestor did not properly request the body worn camera recordings we indicated pursuant to chapter 1701, our ruling does not reach this information, and it need not be released to the requestor. Further, 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). However, as the requestor did provide the requisite information under 1701.661(a) for the remaining body worn camera recordings, we will address your arguments for this information. We will also address your arguments against disclosure of the remaining information.

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. We note the video recordings we indicated contain motor vehicle record information subject to section 552.130. You state the department does not have the technological capability to redact this motor vehicle record information from the recordings. Accordingly, we conclude the department must withhold the video recordings we indicated in their entirety, all visible license plates, and the motor vehicle record information we marked in the documents under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). However, we find the remaining information does not contain motor vehicle record information subject to section 552.130 of the Government Code. Accordingly, the department may not withhold any portion of the remaining information under section 552.130 of the Government Code.¹

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 sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than 3.3 million. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

You assert the information at issue contains the originating telephone number of a 9-1-1 caller. You do not inform us, however, whether the department is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. Nevertheless, if the department is part of an emergency communication district established under one of these sections, then, to the extent the telephone number of the 9-1-1 caller was supplied by a 9-1-1 service supplier, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. If the department is not subject to section 772.118, section 772.218, or section 772.318, or if the telephone number was not supplied by a 9-1-1 service supplier, then the department may not withhold this information under section 552.101 of the Government Code on the basis of section 772.118, section 772.218, or section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also 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. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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 all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, as the requestor did not properly request the body worn camera recordings we indicated pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information, and it need not be released to the requestor. The department must withhold the video recordings we indicated in their entirety, all visible license plates, and the motor vehicle record information we marked in the documents under section 552.130 of the Government Code. If the department is part of an emergency communication district, then, to the extent the telephone number of the 9-1-1 caller was supplied by a 9-1-1 service supplier, the department must withhold the telephone number at issue under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. The department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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 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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 801041.

Enc. Submitted documents

c: Requestor
(w/o enclosures)