



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 27, 2019

Ms. Karen Strand
Senior Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2019-36464

Dear Ms. Strand:

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# 803984.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified incident.¹ You state the department will release some information. You also state the department will withhold dates of birth pursuant to the previous determination issued in Open Records Letter No. 2015-24970 (2015).² You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code.³ We have considered the claimed exceptions and reviewed the submitted information.

¹ The department informs us it sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See Gov't Code* § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). The department states it received the required deposit on October 9, 2019. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

² Open Records Letter No. 2015-24970 is a previous determination issued to the department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

³ Although you cite to section 552.117 of the Government Code for portions of the submitted information, we note section 552.1175 of the Government Code is the proper exception to raise for information the department holds in a law enforcement capacity rather than in an employment capacity.

Section 552.101 of the Government Code exempts 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 information made confidential by other statutes. 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) of the Occupations Code provides the following:

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 provides the requisite information under section 1701.661(a) for release of the body worn camera recordings at issue. We note, however, section 1701.661(f) provides, in relevant part, “A law enforcement agency may not release any portion of a recording made in a private space . . . 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). Upon review, we find the portions of the submitted video recordings you indicated were made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). You inform us the department does not have permission for release from the subject of the recording made in the private space. *See id.* § 1701.661(f). Accordingly, we find the department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). The department must withhold the information you indicated under section 552.1175 if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b).

Section 552.130 of the Government Code exempts from public disclosure information relating to a motor vehicle operator’s or driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or

country. *See id.* § 552.130. The remaining information contains visible license plates and audible license plate numbers. The department must withhold this information, which you indicated, under section 552.130 of the Government Code.

In summary, the department must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must withhold the information you indicated under section 552.1175 of the Government Code if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. The department must withhold the motor vehicle record information you indicated under section 552.130 of the Government Code. The department must release the remaining information.⁴

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

MG/gw

Ref: ID# 803984

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); *see also* Open Records Decision No. 481 at 4 (1987). Accordingly, if the department receives another request for this same information from a different requestor, the department must again seek a ruling from this office.