



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 30, 2019

Ms. Stacie S. White
Counsel for the City of Boerne
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2019-36476

Dear Ms. White:

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# 803643.

The City of Boerne (the "city"), which you represent, received a request for information pertaining to a specified incident. The city indicates it will withhold information pursuant to section 552.130(c) of the Government Code.¹ The city claims the submitted information is either not subject to release pursuant to chapter 1701 of the Occupations Code or excepted from disclosure under section 552.101 of the Government Code.² We have considered the submitted arguments and reviewed the submitted information.

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

² We note the city did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). Nevertheless, because sections 552.101 and 552.1175 of the Government Code make information confidential, they can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987). Thus, we will consider whether the submitted information must be withheld on those grounds.

The submitted information includes body worn camera recordings of city police officers. 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) 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). The requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach these recordings and the city is not required to release them. However, 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).

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 the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). The city must withhold the date of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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. *See* Gov’t Code § 552.1175. The city must withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. However, the city may not withhold this information under section 552.1175 if the individual either is not a

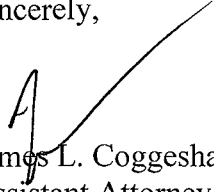
currently licensed peace officer or does not elect to restrict access to this information in accordance with section 552.1175(b).

In summary, because the requestor did not properly request the submitted body worn camera recordings pursuant to chapter 1701 of the Occupations Code, our ruling does not reach the body worn camera recordings at issue and the city is not required to release them. The city must withhold the date of birth it has marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The city 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 803643

Enc. Submitted documents

c: Requestor
(w/o enclosures)