



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2020

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

OR2020-02140

Dear Ms. Warren and 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# 807770.

The City of Temple (the "city") received two requests from different requestors for information related to a specified vehicle-pedestrian 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 submitted only emergency medical records, photographs, and video recordings and have not submitted information responsive to the remaining categories of requested information. To the extent any additional information responsive to the requests existed on the dates the city received the requests, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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. 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:

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 second requestor does not give the requisite information under section 1701.661(a). As the second requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information as to the second requestor, and it need not be released in response to the second request. 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).

The first requestor did provide the requisite information under section 1701.661(a). 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). You state 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. You state you do 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 submitted body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. However, the remaining information consists of dashboard camera recordings, photographs, and emergency medical records, not body worn camera recordings. Therefore, the remaining information is not subject to section 1701.661 of the Occupations Code, and the city may not withhold the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which is applicable to information relating to the provision of emergency medical services (“EMS”). Section 773.091 provides, in pertinent part:

- (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.

Health & Safety Code § 773.091(b). However, section 773.091 further provides:

(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].

Id. § 773.091(g); *see id.* § 773.003(8) (defining “emergency medical services” for purposes of chapter 773 of the Health and Safety Code). Upon review, we find a portion of the remaining information constitutes EMS records made by EMS personnel or maintained by an EMS provider. Therefore, except for the information subject to section 773.091(g), which is not confidential under section 773.091, the city must withhold the submitted EMS records under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

Section 552.101 of the Government Code also 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 court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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 city must withhold the audible public citizen’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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.¹ *See* Gov’t Code § 552.130(a). Accordingly, the city must withhold the information we indicated under section 552.130 of the Government Code.

In summary, as the second requestor did not properly request the body worn camera video recordings pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information as to the second requestor, and the city need not release the submitted body camera video recordings in response to the second request for information. The city must withhold the submitted body worn camera recordings from the first requestor 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), the city must withhold the submitted EMS records under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code. The city must withhold the audible public citizen’s date of birth under section 552.101 of the

¹ 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).

Government Code in conjunction with common-law privacy. The city must withhold the information we indicated under section 552.130 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,

A handwritten signature in black ink, appearing to read 'Deborah Southerland', written in a cursive style.

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/rm

Ref: ID# 807770

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)