



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 14, 2020

Ms. Alicia K. Kreh
Counsel for the City of Saginaw
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2020-04850

Dear Ms. Kreh:

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# 812183 (Ref. No. 969-2019).

The City of Saginaw (the "city"), which you represent, received four requests from different requestors for information pertaining to a specified incident. You state the city will redact information pursuant to section 552.147(b) of the Government Code and Open Records Decision 684 (2009).¹ You claim two of the requestors did not properly request the submitted body worn camera recordings pursuant to section 1701.661 of the Occupations Code. You also claim some of 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:

¹ Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general opinion.

(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 second and third requestors do not provide the requisite information under section 1701.661(a), and this information need not be released to the second and third requestors.² However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (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). Further, the first and fourth requestors provided the information required by section 1701.661(a) with respect to the submitted body worn camera recordings. *Id.* Accordingly, we find the first and fourth requestors properly requested the body worn camera recordings at issue and we will address the city’s arguments against their disclosure to the first and fourth requestors.

Next, we note the submitted information includes a CR-3 accident report. 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 information 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. 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 first, third, and fourth requestors are persons listed under section 550.065(c). Thus, the first, third, and fourth have a statutory right of access to the accident report under section 550.065(c). However, the second requestor has not demonstrated he is a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b) with respect to the second requestor, and the city must withhold it from the first requestor under section 552.101 of the Government Code.

² As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

However, section 550.065(c-1) requires the city to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c 1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the first requestor has a right of access to the redacted accident report. Thus, the city must release the accident report in its entirety to the first, third, and fourth requestors pursuant to section 550.065(c) of the Transportation Code and must release the redacted accident report to the second requestor pursuant to section 550.065(c-1) of the Transportation 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 excepted from public release. *See* Gov't Code § 552.130. The remaining video recordings contain motor vehicle record information that is subject to section 552.130. The city states it lacks the technical capability to redact the information subject to section 552.130 from the video recordings. Based upon this representation, we agree the city must withhold the remaining video recordings in their entirety under section 552.130 of the Government Code.³ The city must also withhold the motor vehicle record information you marked under section 552.130 of the Government 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 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 city must withhold the public citizens' dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

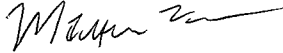
In summary, the second and third requestors did not properly request the submitted body worn camera recordings pursuant to chapter 1701 of the Occupations Code and the city need not release them to the to the second and third requestors. The city must release the accident report in its entirety to the first, third, and fourth requestors pursuant to section 550.065(c) of the Transportation Code and must release the redacted accident report to the second requestor pursuant to section 550.065(c-1) of the Transportation Code. The city must withhold the remaining video recordings in their entirety and the information you marked under section 552.130 of the Government Code. The city must withhold the public citizens' dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/gw

Ref: ID# 812183

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)