



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 11, 2020

Mr. Robert Carroll
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2020-07684

Dear Mr. Carroll:

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# 816108 (COD Req. ID# P001941-121119).

The Odessa Police Department (the "department") received a request for information pertaining to a specified incident.¹ The department claims portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code.² We have considered the exceptions the department claims and reviewed the submitted information.

Initially, we note the submitted information includes a video recording from a department officer's body worn camera. 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:

¹ As the department has not submitted a copy of the request for information, we take our description from the department's brief.

² Although the department does not cite to section 552.108 of the Government Code in its brief, we understand the department to raise this exception based on the substance of its argument.

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, we are not able to determine whether the requestor provided the requisite information under section 1701.661(a). Thus, we rule in the alternative. To the extent the requestor did not give the requisite information under section 1701.661(a), the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code. In that instance, our ruling does not reach this information and the department need not release it. 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). To the extent the requestor did provide the requisite information under section 1701.661(a), we will consider the department’s arguments against disclosure of this information.

Next, we note Exhibit B was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2020-00374 (2020). In that ruling, we determined the department must (1) withhold some information under section 552.101 of the Government Code in conjunction with common-law privacy, (2) withhold some information under section 552.130 of the Government Code, and (3) release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department must rely on Open Records Letter No. 2020-00374 as a previous determination and withhold or release Exhibit B in accordance with that ruling.³ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we must address the department’s obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov’t Code § 552.301. Pursuant to section 552.301(e), a governmental

³ As we are able to make this determination, we need not address the department’s arguments against disclosure of this information.

body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The department states it received the request for information on December 11, 2019. As of this date, the department has not submitted to this office a copy of the written request for information. Consequently, we conclude the department failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The department claims sections 552.101, 552.108, and 552.130 of the Government Code for the remaining information. Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address the department's arguments under these exceptions against release of the remaining information. However, we find the department has failed to establish a compelling reason to address its remaining claimed exception.

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 protected by other statutes, such as section chapter 1701 of the Occupations Code. 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.

Occ. Code § 1701.661(f). Upon review, we find portions of the submitted body worn camera recording were made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). We understand the department does not have a written authorization for release from the subject of the portions of the recording at issue. *See id.* § 1701.661(f). Accordingly, the department must withhold the information we

indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.⁴

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.). Therefore, the department must withhold the public citizen's date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any of the remaining information under section 552.101 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. *See Gov't Code* § 552.130. Accordingly, the department must withhold the driver's license and license plate numbers and states of issuance in the remaining information under section 552.130 of the Government Code.

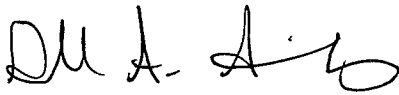
In summary, to the extent the requestor did not give the requisite information under section 1701.661(a), the submitted body worn camera recording was not properly requested pursuant to chapter 1701 of the Occupations Code, and the department need not release it to this requestor in response to this request for information. The department must rely on Open Records Letter No. 2020-00374 as a previous determination and withhold or release Exhibit B in accordance with that ruling. The department must withhold the information we 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 public citizen's date of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the driver's license and license plate numbers and states of issuance in the remaining information under section 552.130 of the Government Code. The department must release the remaining information.

⁴ As our ruling is dispositive, we need not address the department's arguments against disclosure of this 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 "Gerald Arismendez". The signature is fluid and cursive, with the first name being the most prominent.

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/rm

Ref: ID# 816108

Enc. Submitted documents

c: Requestor
(w/o enclosures)