



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2020

Ms. Judy Hickman
Assistant Supervisor
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704

OR2020-08518

Dear Ms. Hickman:

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# 817544.

The Beaumont Police Department (the "department") received a request for certain information pertaining to case number 2019028021. You state the department has made some information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information includes peace 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(a) of the Occupations Code provides the following:

¹ Although you do not cite to section 552.130 of the Government Code in your brief, we understand you to raise this section based on the substance of your arguments.

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 does not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released.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).

Next, we address your contention that article 15.26 of the Code of Criminal Procedure does not make the submitted probable cause affidavit expressly public. Article 15.26 of the Code of Criminal Procedure provides, in relevant part, the following:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate’s clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk’s office during normal business hours.

Crim Proc. Code art. 15.26. Thus, we interpret article 15.26 of the Code of Criminal Procedure to apply only to court clerks. Therefore, we find that article 15.26 does not make the probable cause affidavit maintained by the department expressly public. Accordingly, we will address your arguments against disclosure of the remaining information.

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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). You state the

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

department received the request for information on December 18, 2019. You inform us the department was closed for business on December 25, 2019, and January 1, 2020. We note this office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-business-day deadline under section 552.301(b) was January 3, 2020. Additionally, you indicate the department sought clarification on January 6, 2020. Thus, we understand you to claim the deadlines should be reset because the department asked for clarification from the requestor. However, we note the department did not request clarification of the request until after the ten-business-day deadline had passed. As such, the statutory deadlines for requesting an opinion from this office and submitting the required documentation for the request were not reset by the request for clarification and must be measured from the date the department received the present request. *See generally City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (after requesting clarification within ten-business-day deadline, governmental body timely submitted request for opinion within ten business days after receiving clarification). Therefore, as stated above, the department's ten-business-day deadline was January 3, 2020. However, the envelope in which the department provided the information required by sections 552.301(b) was postmarked January 10, 2020. *See Gov't Code* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the department failed to comply with the procedural requirements mandated by section 552.301(b) 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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You raise sections 552.101, 552.108, 552.130, and 552.137 of the Government Code for the information at issue. Because sections 552.101, 552.130, and 552.137 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the information at issue. However, we find you failed to establish a compelling reason to address your remaining claim against disclosure.

Section 552.130 of the Government Code excepts from disclosure 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. You assert, and we agree, the remaining video recordings contain confidential motor vehicle record information that is excepted from disclosure under section 552.130. You state the department does not possess the technological capability to redact information from video files. Accordingly, the department must withhold the entireties of the remaining video

recordings under section 552.130 of the Government Code.³ See Open Records Decision No. 364 (1983).

Section 552.101 of the Government Code excepts from public 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 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.). Accordingly, the department must withhold the public citizens’ dates of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body[,]” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Accordingly, the department must withhold the e-mail address you marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, as the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The department must withhold the entireties of the remaining video recordings under section 552.130 of the Government Code. The department 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 department must withhold the e-mail address you marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The department 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

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

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 M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 817544

Enc. Submitted documents

c: Requestor
(w/o enclosures)