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May 28, 2020

Mr. Eric C. Farrar
Counsel to City of Katy
Olson & Olson, LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2020-14779

Dear Mr. Farrar:

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# 831603 (Ref: COK-ORR-170-2020).

The City of Katy (the "city") received a request for all information pertaining to a specified internal affairs complaint. The city states it is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You claim some information is subject to section 1701.661 of the Occupations Code. You also claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

The city asserts the submitted recordings were not properly requested pursuant 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;

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) 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). Section 1701.661 applies to a police officer's body worn camera recording. *See id.* § 1701.651(1)(B) (“‘Body worn camera’ means a recording device that is . . . worn on the person of a peace officer[.]”). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request body worn camera recordings 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 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). However, we conclude the city has failed to demonstrate the remaining recording at issue consists of information recorded by a body worn camera for purposes of section 1701.661. Therefore, we conclude the remaining recording is not subject to section 1701.661 of the Occupations Code, and the city may not withhold any portion of it on that basis.

Section 552.101 of the Government Code excepts “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, 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 the *Industrial Foundation* decision. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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 marked date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Further, we find the information we marked and portions of the submitted audio recording satisfy the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. You state the city does not have the technological capability to redact the remaining video recording. Accordingly, the city must also withhold the information we marked and the remaining video recording in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the submitted body worn camera recording need not be released pursuant to section 1701.661(a) of the Occupations Code. The city must withhold the marked date of birth under section 552.101 of the Government Code in conjunction with common-law

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

privacy. The city must also withhold the information we marked and the remaining video recording in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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,

Melanie Villars
Assistant Attorney General
Open Records Division

MJV/mo

Ref: ID# 831603

Enc. Submitted documents

c: Requestor
(w/o enclosures)