



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 8, 2020

Mr. Jimmy A. Cassels
Counsel for City of Huntington
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P.O. Box 1626
Lufkin, Texas 75902-1626

OR2020-15620

Dear Mr. Cassels:

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# 829628.

The City of Huntington (the "city"), which you represent, received a request for all active law enforcement files related to a pending criminal case, including traffic offenses, during a specified time period.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, 552.132, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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.

¹ The city provides documentation showing it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released in response to this request.³ 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).

Next, we note the requestor claims the city failed to comply with the procedural requirements of the Act in requesting a ruling from this office. Section 552.301 of the Government Code 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 the attorney general’s decision and state the exceptions that apply within ten business days after receiving the request for information. *See id.* § 552.301(b). In this instance, the requestor submitted a request for information by electronic mail to the city administrator on January 31, 2020. We understand the city to argue this request for information was not a proper written request, and therefore, did not require the city to respond. However, we note section 552.234 of the Government Code provides a person may make a written request for public information by delivering the request to the applicable officer for public information or a person designated by that officer via electronic mail. *See id.* § 552.234(a)(2). Section 552.201(a) states the chief administrative officer of a governmental body is the officer for public information. *See id.* § 552.201(a). Upon review, we determine the electronic mail sent to the city administrator on January 31, 2020, was sent to the city’s officer for public information for purposes of section 552.234(a). *Id.* § 552.234(a)(2). Thus, we find the electronic mail correspondence of January 31, 2020, was a valid request for purposes of the Act. Accordingly, the city’s ten-business-day deadline was February 14, 2020. The envelope in which the city sent its request for a ruling is post-marked March 16, 2020. *See id.* § 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,

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

we find the city failed to comply with the requirements of 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 (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 city claims sections 552.101, 552.102, 552.108, 552.130, 552.132, and 552.136 of the Government Code for the submitted information. Because sections 552.101, 552.102, 552.130, 552.132, and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the submitted information. However, we find you have failed to establish a compelling reason to address your remaining claimed exception.

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 *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victims of serious sexual offenses). In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 3; *see* ORD 339; *see also* *Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing and public did not have a legitimate interest in such information). 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.). We note information belonging to individuals who have been de-identified may not be withheld under common-law privacy as the de-identified individuals' privacy interests are, thus, protected.

Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold all identifiable public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁴ However, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold the remaining information 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. *See* Gov't Code § 552.130. Accordingly, with the exception of the information we marked for release, the city must withhold the motor vehicle record information it marked and the additional information we marked under section 552.130 of the Government Code. However, none of the remaining information you have marked is subject to section 552.130, and the department may not withhold it on that basis.

Section 552.132 provides:

(a) Except as provided by Subsection (d), in this section, "crime victim or claimant" means a victim or claimant under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

(c) If the crime victim or claimant is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim or claimant and the amount of compensation awarded to that crime victim or claimant are public information and are not excepted from [required public disclosure].

See id. § 552.132. The information at issue is held by the city, not the crime victim's compensation division of the attorney general's office. Therefore, section 552.132(b) is not applicable to any portion of the information. Accordingly, the city may not withhold any portion of the remaining information under section 552.132 of the Government Code.

⁴ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the routing, bank account, and debit card numbers it marked under section 552.136 of the Government Code.

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 city must withhold all identifiable public citizens’ dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the city must withhold the motor vehicle record information it marked and the additional information we marked under section 552.130 of the Government Code. The city must withhold the routing, bank account, and debit card numbers it marked under section 552.136 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,

Pearlie Gault
Attorney
Open Records Division

PG/rm

Ref: ID# 829628

Enc. Submitted documents

c: Requestor
(w/o enclosures)