



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 14, 2020

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

OR2020-17484

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# 835525 (Ref. No. P003061-042720).

The Odessa Police Department (the "department") received a request for information pertaining to a specified incident. You claim some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. You also claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2020-00607 (2020). In that ruling, we determined 1) the department must withhold the marked information and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy, 2) the department must withhold the marked motor vehicle record information under section 552.130 of the Government Code, and 3) the department must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the department must continue to rely on Open Records Letter No. 2020-00607 as a previous determination and withhold or release the information at issue in accordance with that ruling. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your arguments for the submitted information not subject to the previous ruling.

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(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, our ruling does not reach this information and it need not be released.¹ 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).

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. You assert some of the remaining information is protected by common-law privacy. Upon review, however, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

¹ As we are able to make this determination, we need not address your arguments against disclosure of this information.

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.² *See* Gov't Code § 552.130. Accordingly, the department must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2020-00607 as a previous determination and withhold or release the information at issue in accordance with that ruling. As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. The department must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code. 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 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/gw

Ref: ID# 835525

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).