



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 14, 2020

Ms. Nicole Warren  
Deputy City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2020-23123

Dear Ms. Warren:

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# 844750 (ORR# 20-1448).

The City of Temple (the "city") received a request for eleven categories of information pertaining to a specified traffic accident. You claim some of the submitted information was not properly requested pursuant to section 1701.661 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 you have only submitted video recordings and an emergency medical services report pertaining to the specified traffic accident. To the extent any information responsive to the remaining categories of the request existed on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

The submitted information includes city 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 as follows:

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.<sup>1</sup> See generally *King v. Paxton*, 576 S.W.3d 881 (Tex. App.—Austin 2019, pet. denied). 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.” Occ. Code § 1701.661(b).

Section 552.101 of the Government Code exempts 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 section 773.091 of the Health and Safety Code, which provides, in relevant part, as follows:

(a) A communication between certified emergency medical services [(“EMS”)] personnel or a physician providing medical supervision and a patient that is made in the course of providing EMS to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by EMS personnel or by a physician providing medical supervision that are created by the EMS personnel or a physician or maintained by an EMS provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving EMS.

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<sup>1</sup> As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

Health & Safety Code § 773.091(a)-(b), (g). The information submitted as Exhibit C consists of records made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to the information at issue. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.<sup>2</sup>

Section 552.1175 of the Government Code protects the home addresses and telephone numbers, emergency contact information, dates of birth, social security numbers, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.<sup>3</sup> See Gov't Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Upon review, we find some of the remaining information contains personal information of peace officers. Accordingly, the city must withhold the information we indicated under section 552.1175 of the Government Code if the individuals elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code.

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. *Id.* § 552.130. We note section 552.130 protects personal privacy. Thus, the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from her under section 552.130. See *id.* § 552.023(a) (“person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests”); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the exception of the motor vehicle record information pertaining to the requestor's client, the city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

Section 552.101 of the Government Code also 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 publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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,

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<sup>2</sup> We note this ruling does not affect an individual's right of access to EMS records from the EMS personnel who provided treatment under chapter 773 of the Health and Safety Code. See Health & Safety Code §§ 773.092-.093; cf. *Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.).

<sup>3</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The requestor has a right of access to her client’s date of birth pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Thus, with the exception of the date of birth belonging to the requestor’s client, the city must withhold all public citizens’ dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, 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. With the exception of the information subject to section 773.091(g) of the Health and Safety Code, which is not confidential, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must withhold the information we indicated under section 552.1175 of the Government Code if the individuals elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. With the exception of the motor vehicle record information pertaining to the requestor’s client, the city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. With the exception of the date of birth belonging to the requestor’s client, the city must withhold all public citizens’ dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.<sup>4</sup>

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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/jm

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<sup>4</sup> As noted above, the requestor has a special right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)