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ATTORNEY GENERAL OF TEXAS

December 30, 2020

Mr. David Overcash
Counsel for the City of Princeton
Wolfe, Tidwell & McCoy, LLP
2591 Dallas Parkway, Suite 300
Frisco, Texas 75034

OR2020-32302

Dear Mr. Overcash:

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# 859968 (W022934-093020).

The City of Princeton (the "city"), which you represent, received a request for information pertaining to a specified case number. You state the city will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note portions of the submitted information, which you marked, are not responsive to the instant request because they do not pertain to the specified case number.

¹ We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

² We note the city did not comply with the requirements of section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Nonetheless, sections 552.101 and 552.130 of the Government Code are mandatory exceptions that can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the city's claims under these exceptions.

³ 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 that those records contain substantially different types of information than that submitted to this office.

The city need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we note some of the submitted information consists of 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.⁴ 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 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Upon review, we find the information we marked and the remaining video recordings contain motor vehicle record information subject to section 552.130. You state the city does not possess the technological capability to redact information from the video recordings at issue. Accordingly, we conclude the city must withhold the information we marked and the remaining video recordings under section 552.130 of the Government Code.⁵ *See* Open Records Decision No. 364 (1983). However, the remaining information you marked does not consist of motor vehicle record information and may not be withheld under section 552.130 of the Government Code.

The city asserts the dates of birth in the remaining information are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-

⁴ As we are able to make this determination, we need not address the argument against disclosure of this information.

⁵ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

law privacy. Section 552.101 excepts 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 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. *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 public citizens’ dates of birth you marked and the additional public citizens’ dates of birth we marked 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. The city must withhold the information we marked and the remaining video recordings under section 552.130 of the Government Code. The city must withhold the public citizens’ dates of birth you marked and the additional public citizens’ dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.

Finally, you ask this office to issue a previous determination permitting the city to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

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Mr. David Overcash - Page 4

Ref: ID# 859968

Enc. Submitted documents

c: Requestor
(w/o enclosures)