



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2022

Ms. Stephanie Hernandez
Administrative Support Specialist
City of Carrollton
P.O. Box 110535
Carrollton, Texas 75011-0535

OR2022-06338

Dear Ms. Hernandez:

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# 932714 (City ID# T002649).

The City of Carrollton (the "city") received a request for information pertaining to a named individual at a specified address during a defined time period. You state you released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which 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 a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The city received the instant request for information on November 15, 2021. We understand the city was closed on November 25, 2021, in observation of Thanksgiving. This office does not count the date the request was received, weekends, or holidays for purposes of calculating a governmental body's deadlines. Accordingly, the city was required to provide the information required by section 552.301(b) by November 30, 2021. However, the envelope in which the city provided the information required by sections 552.301(b) was postmarked December 13, 2021. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 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, 552.108, 552.130 and 552.137 of the Government Code for the submitted information. Because sections 552.101, 552.130, and 552.137 can provide compelling reasons to overcome the presumption of openness, we will address the city's arguments under these exceptions against release of the submitted information. However, we find the city has failed to establish a compelling reason to address its 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. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the city to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the city maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not constitute part of a criminal history compilation of the named individual and may not be withheld on that basis. Accordingly, we will address your argument against disclosure of this information.

We note the information at issue consists of 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 provides, in relevant part, the following:

(a) 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 provide the requisite information under section 1701.661(a). 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.¹ However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (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).

In summary, to the extent the city maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The submitted body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code and they need not 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,

Pearlie Gault
Attorney
Open Records Division

PG/be

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

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Enc. Submitted documents

c: Requestor
(w/o enclosures)