



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2022

Mr. Siang L. Sang
Assistant City Attorney
City of Fort Worth
200 Texas Street, Third Floor
Fort Worth, Texas 76102

OR2022-10813

Dear Mr. Sang:

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# 941431 (Ref. No. P003158-011822).

The City of Fort Worth (the "city") received a request for information pertaining to a particular incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the submitted information contains 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 the following:

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). We note the requestor provided the requisite information under section 1701.661(a) for some of the body worn camera recordings at issue. As these body worn camera recordings were properly requested pursuant to chapter 1701 of the Occupations Code, we will address your arguments against their disclosure. However, the requestor did not give the requisite information under section 1701.661(a) for the remaining body worn camera recordings at issue. As the requestor did not properly request the remaining body worn camera recordings pursuant to chapter 1701, our ruling does not reach this information, and it need not be released to the requestor.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 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, 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 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.). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. In this instance, you seek to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the entirety of the submitted information under section 552.101 of the Government Code on that basis. However, upon review, we find portions of the submitted information, which we have marked and indicated, are highly intimate or embarrassing and not of legitimate public concern. We note the requestor has a right of access to her own date of birth. *See Gov’t Code § 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”); *Open Records Decision No. 481* at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the city must

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

withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you failed to demonstrate any portion of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, 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.² Gov't Code § 552.1175. We note, for purposes of section 552.117, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon review, we find the information we have indicated consists of personal information of individuals who may be among the types of individuals listed in section 552.1175(a). Accordingly, to the extent the information at issue relates to individuals who are subject to section 552.1175 and who elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we have indicated under section 552.1175 of the Government Code. Conversely, to the extent the individuals whose information is at issue are not subject to section 552.1175 or do not elect to restrict access to their information in accordance with section 552.1175(b), this information may not be withheld under section 552.1175.

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 id.* § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481. Accordingly, with the exception of information belonging to the requestor, the city must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

In summary, for the body worn camera recordings that the requestor did not properly request 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 have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the officers at issue elect to restrict access to the information at issue in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we have indicated under section 552.1175 of the Government Code. With the exception of information belonging to the requestor, the city must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The city must release the remaining information to this requestor.

² 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, 480 (1987), 470 (1987).

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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jxd

Ref: ID# 941431

Enc. Submitted documents

c: Requestor
(w/o enclosures)