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ATTORNEY GENERAL OF TEXAS

April 27, 2022

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2022-11979

Dear Mr. Kopp:

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# 941609 (COSA File No. W421901).

The City of San Antonio (the "city") received a request for information related to a specified incident involving the requestor.¹ You state the city will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted representative sample of information.³

¹ You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² We note, and you acknowledge, the city did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision with respect to some of the information requested. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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

Initially, we note some of the submitted information, which we marked and indicated, is not responsive to the clarified request for information because it does not pertain to the specified incident. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.⁴

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. The responsive information includes video recordings from the body worn video cameras of police officers of the city’s police department. 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. We find the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the responsive body worn camera recordings. However, section 1701.661(f) provides, in part:

A law enforcement agency may not release any portion of a recording made in a private space . . . without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person’s authorized representative.

Id. § 1701.661(f). Upon review, we find the responsive body worn camera recordings were made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). You state the city has not received permission for release from all of the subjects of the recordings made in the private space. *See id.* § 1701.661(f). Accordingly, we find the city must withhold the responsive body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

Section 552.101 of the Government Code also 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 types of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987). We note the requestor has a right of access to her date of birth and private information, and this information may not be withheld from her under

⁴ As we are able to make this determination, we need not address your arguments against disclosure of this information

common-law privacy. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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 individuals request information concerning themselves). Upon review, we conclude some of the remaining responsive information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Therefore, none of the remaining responsive information may be withheld under section 552.101 of the Government Code 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.⁵ Gov't Code § 552.1175. Section 552.1175 applies, in part, to "a firefighter or volunteer firefighter or emergency medical services personnel as defined by Section 773.003 of the Health and Safety Code[.]" *Id.* § 552.1175(a)(18). Some of the remaining responsive information may pertain to an individual subject to section 552.1175(a)(18) of the Government Code. Thus, to the extent the information we marked and indicated relates to an individual to whom section 552.1175(a) applies and the individual elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we marked and indicated under section 552.1175 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. *See id.* § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her 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), ORD 481 at 4. Accordingly, to the extent the motor vehicle record information at issue does not relate to the requestor, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the city must withhold the responsive body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we marked and indicated relates to an individual to whom section 552.1175(a) of the Government Code applies and the individual elects to restrict access to

⁵ 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).

his information in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we marked and indicated under section 552.1175 of the Government Code. To the extent the motor vehicle record information at issue does not relate to the requestor, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must release the remaining responsive information.⁶

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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/mo

Ref: ID# 941609

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶ We note the information being released contains some information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); *see also* ORD 481 at 4. Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.