



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 29, 2022

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

OR2022-12294

Dear Ms. Thomas:

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# 945141 (Ref. No. 22-278).

The City of Temple (the "city") received a request for information pertaining to a specified incident. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted information.

Initially, we note the city has only submitted video recordings pertaining to the specified incident. To the extent any information responsive to the remainder 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).

Next, we note the submitted information includes 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:

¹ We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office with respect to some of the submitted information. *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.

(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) for some of the submitted body worn camera recordings. As the body worn camera recordings we have indicated 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.² 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). We note the instant request includes the information required by section 1701.661(a) with respect to the remaining body worn camera recordings. *Id.* Accordingly, we find the requestor properly requested the remaining body worn camera recordings at issue and we will address the city’s argument against their disclosure. However, we note the remaining information consists of dash and in-car camera recordings. We find this information does not consist of a body worn camera recording. Therefore, the remaining information is not subject to section 1701.661 of the Occupations Code and the city may not withhold any portion of the remaining information on that basis. However, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, 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 a portion of the remaining 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)). Accordingly, we find the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.³ Additionally, the city states the remaining information relates to an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in an arrest. However, upon review,

² As we are able to make this determination, we need not address the city’s argument against disclosure of this information.

³ As our ruling is dispositive, we need not address the city’s remaining argument against disclosure of this information.

we find the remaining recordings depict the arrest of an individual. Thus, we find the city has failed to demonstrate the remaining information involves the investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 1701.661(f) on that basis.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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.). Upon review, we find some of the remaining information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b).⁴ We note, for purposes of section 552.1175, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c) (providing that "family member" has meaning assigned by Fin. Code § 31.006(d)). Some of the remaining information, which we have indicated, relates to a city police officer but the information is not held by the city in an employment capacity. Accordingly, to the extent the officer at issue elects to restrict access to the 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, if the officer at issue does not elect to restrict access to the information in accordance with section 552.1175(b), the information at issue 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. Accordingly, the city must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code.

In summary, as the body worn camera recordings we have indicated 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. The city must withhold the information we have indicated 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 have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the officer at issue elects to restrict access to the information 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. The city must withhold the motor vehicle record information we have indicated under section 552.130 of the Government Code. The city must release the remaining information.

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

⁴ 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).

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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/eb

Ref: ID# 945141

Enc. Submitted documents

c: Requestor
(w/o enclosures)