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ATTORNEY GENERAL OF TEXAS

May 5, 2022

Mr. Michael L. Martin
Counsel for the Town of Prosper
Brown & Hoffmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2022-12917

Dear Mr. Martin:

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# 945640 (Ref. Nos. 2022-145 and 2022-223).

The Prosper Police Department (the "department"), which you represent, received two requests from different requestors for information pertaining their client, another named individual, and a specified incident.¹ You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, you state, and we agree, the requested 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 You state, and provide documentation demonstrating, the department sought and received multiple clarifications, from both requestors, 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).

(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 requestors do 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 they 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).

Next, we note some of the information at issue was the subject of a previous ruling from this office. In Open Records Letter No. 2022-02171 (2022), this office ruled the department may withhold the submitted information under section 552.108(a)(2) of the Government Code. We have no indication the law, facts, or circumstances upon which Open Records Letter No. 2022-02171 was based have changed. Accordingly, the department may continue to rely on Open Records Letter No. 2022-02171 as a previous determination and withhold the previously ruled upon information in accordance with that ruling.³ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely the same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we must address the department’s obligations with respect to the first request for information 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 department received the first request for information on January 19, 2022. The department received the first clarification of the information requested for the first request on January 28, 2022, and states it received the second clarification of the information requested for the first request on February 7, 2022. *See id.*

² As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

³ In this instance, as we are able to make this determination, we need not address your arguments against the disclosure of this information.

§ 552.222; *see also City of Dallas*, 304 S.W.3d at 387. We understand the department was closed on February 21, 2022, for a holiday. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. The department does not inform us it was closed for any additional business days between February 7, 2022, and February 22, 2022. Accordingly, the department was required to provide the information required by section 552.301(b) for the first request by February 22, 2022. However, the envelope in which the department provided the information required by section 552.301(b) was postmarked February 23, 2022. *See Gov't Code* § 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). Consequently, we conclude the department failed to comply with the procedural requirements mandated by section 552.301(b) of the Government Code with respect to the information responsive to the first request.

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 information at issue 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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You raise section 552.108 of the Government Code for the information at issue. However, we find you failed to establish a compelling reason to address your claim against disclosure with respect to the information responsive to the first request. In addition, we note some of the information you submitted as responsive to the second request is also responsive to the first request. In failing to comply with the procedural requirements of section 552.301 in relation to the first request, you failed to comply with section 552.301 with respect to the same information responsive to the second request. *See Gov't Code* § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Thus, we do not address your argument under section 552.108 for the information that is also responsive to the second request. However, we will address your claim under section 552.108 with respect to the remaining information that is responsive to only the second request. Additionally, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the submitted information at issue.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states some of the information at issue relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, the department may withhold the information we indicated under section 552.108(a)(2) of the Government Code.⁴

⁴ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 of the Government Code 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). 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.). articulated by the Texas Supreme Court in *Industrial Foundation*. Upon review, we find some of the remaining information satisfies the standard laid out in *Industrial Foundation*. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, with the exception of the dates of birth of the requestors’ client and the client’s minor children, to which the requestors have a right of access pursuant to section 552.023 of the Government Code, the department must also withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *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). However, we find the department has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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* Gov’t Code § 552.130(a). We note section 552.130 protects personal privacy. Accordingly, the requestors have a right of access to their client’s 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 at 4. Thus, with the exception of the requestors’ client’s motor vehicle information, the department must withhold the information it marked, as well as all audible license plate numbers, under section 552.130 of the Government Code.

In summary, as the requested body worn camera recordings were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and they need not be released. The department may continue to rely on Open Records Letter No. 2022-02171 as a previous determination and withhold the previously ruled upon information in accordance with that ruling. The department may withhold the information we indicated under section 552.108(a)(2) of the Government Code. With the exception of the dates of birth of the requestors' client and the client's minor children, the department must withhold the information we marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestors' client's motor vehicle information, the department must withhold the information it marked, as well as all audible license plate numbers, under section 552.130 of the Government Code. The department must release the remaining information.⁵

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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/jxd

Ref: ID# 945640

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

⁵ We note the requestors have special rights of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4 (1987). Accordingly, if the department receives another request for this information from a different requestor, the department must again request a ruling from this office.