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ATTORNEY GENERAL OF TEXAS

May 11, 2022

Mr. Russell Casselberry
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211 North Houston
Lamesa, Texas 79331

OR2022-13568

Dear Mr. Casselberry:

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# 942635.

The City of Lamesa (the "city"), which you represent, received two requests from different requestors for information related to several specified incidents. You state the city does not maintain information responsive to a portion of one of the requests. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released.)

Initially, we note some of the requested information consists of 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:

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, neither requestor gives the requisite information under section 1701.661(a). As the requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701, 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 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).

Next, we must address the city’s obligations with respect to both requests for information under the Act. Section 552.301 of the Government Code 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), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See id.* § 552.301(b). In this instance, the city submits documentation demonstrating it received the first requestor’s request for information on February 3, 2022, (hereinafter, the “first requestor’s request”). Thus, the district’s ten-business-day deadline for the first requestor’s request was February 17, 2022. We understand the city initially mailed the information required by section 552.301(b) on February 16, 2022, but the United States Postal Service returned that correspondence to the city for insufficient postage. The city again mailed the information required by section 552.301(b) on February 22, 2022. Section 552.308 of the Government Code provides, when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail “with postage . . . prepaid” and the postmark date is within the required time period. *See id.* § 552.308. Consequently, we find the city failed to comply with the requirements of section 552.301(b) with respect to information responsive to the first requestor’s request.

Next, we address the second requestor’s assertion the city did not meet its procedural obligations under section 552.301 of the Government Code with respect to her request for information received by the city on February 7, 2022 (hereinafter, the “second requestor’s request” or her “present request”). The second requestor states some of the information the city submitted as responsive to her present request was also responsive to two previous requests for information made by the second requestor, for which the city did not seek rulings from this office and did not previously release to the second requestor. The second requestor states, and submits documentation showing, the two previous requests were identical and were submitted to the city on January 4, 2022, via facsimile and on January 6, 2022, via electronic mail (hereinafter, the “January requests”). Thus, to the extent the submitted information in the second requestor’s request was responsive to her January requests, we understand the second requestor to argue the city violated section 552.301 by

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

failing to either release this information in response to the January requests or timely seek decisions from this office.

We note section 552.234(a), in pertinent parts, provides a person may make a written request for public information by delivering the request to the applicable officer for public information or a person designated by that officer via (1) electronic mail or (2) facsimile transmission if the facsimile method is approved by the governmental body. *See id.* § 552.234(a)(2), (4)(A); *see also id.* § 552.234(b) (facsimile method considered approved by governmental body only if governmental body includes statement request may be made by such method on sign displayed under section 552.205 or on governmental body's website). Additionally, we note a governmental body may designate one mailing address and one electronic mail address for receiving written requests for public information. *See id.* § 552.234(c). Further, pursuant to section 552.234(d), the city is not required to respond to written requests for information that are not received at the designated electronic mail address or by a method described in subsection (a)(4)(A), which includes facsimile transmission. *See id.* § 552.234(d). We note there is no facsimile number or electronic mail address posted on the city's website. Because we are unable to determine whether the second requestor's January requests were valid requests for purposes of the Act, we must rule conditionally.

If the city has not designated an electronic mail address pursuant to section 552.234(c), and the second requestor's January e-mail request was not submitted to the city's officer for public information or a person designated by that officer, we find this request did not trigger the requirements under the Act. Additionally, if the city has designated an electronic mail address pursuant to section 552.234(c), and the second requestor's January e-mail request was not submitted to the designated electronic mail address, we find this request did not trigger the requirements of the Act. Lastly, if the city has not designated facsimile transmission as an approved method of delivering a public information request, or if the second requestor's January facsimile request was not submitted to the designated facsimile number, we find this request did not trigger the requirements of the Act. Under any of these circumstances, we find the city did not fail to request a ruling as required by section 552.301 with respect to the information at issue, and we will consider the city's argument against disclosure.

However, to the extent either of the second requestor's January requests were properly submitted pursuant to section 552.234, we understand the city was closed on January 17, 2022; thus, the city's ten-business-day deadlines for the January requests were January 19, 2022, and January 21, 2022. We note 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. However, the information required by section 552.301(b) was submitted in an envelope postmarked February 16, 2022. Therefore, to the extent the information existed and was responsive to the second requestor's January requests, we find the city failed to comply with the requirements of section 552.301 with respect to the second requestor's 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 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, 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). The city claims section 552.108 of the Government Code for the submitted information. However, we find the city has failed to establish a compelling reason to address its claim against disclosure with respect to the information responsive to the first requestor's request. We note some of the information it submitted as responsive to the second requestor's request is also responsive to the first requestor's request. Because the city failed to establish a compelling reason to address its claim under section 552.108 for this information with respect to the first requestor's request, we do not address its argument under that section for the same information that is also responsive to the second requestor's request. *See* Gov't Code § 552.007 (prohibiting selective disclosure of information); Open Records Decision No. 463 at 1-2 (1987). Additionally, to the extent the second requestor's January requests were properly submitted pursuant to section 552.234 and the submitted information existed and was responsive to the second requestor's January requests, we find the city failed to establish a compelling reason to address its claim under section 552.108, and we do not address its argument under that exception for the information at issue. Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these sections to the submitted information.²

Section 552.108(a)(2) of the Government Code exempts 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). Your state case file I-21-05-0060 pertains to a closed criminal case that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to case file I-21-05-0060.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, to the extent the city did not violate section 552.301 with respect to the information in case file I-21-05-0060, with the exception of the basic information, which must be released, the city may withhold case file I-21-05-0060 under section 552.108(a)(2).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code also encompasses the doctrine

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 (1987), 480 (1987), 470 (1987).

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 also held common-law privacy protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. 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.). We note the first requestor has a right of access to his own date of birth pursuant to section 552.023 of the Government Code and it may not be withheld from him under common-law privacy. *See* Gov't Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental bod that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 5 (1987) (privacy theories not implicated when individuals request information concerning themselves).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked and all identifiable public citizens' dates of birth under section 552.101 in conjunction with common-law privacy; however, the city may not withhold from the first requestor's date of birth from him on that basis.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The city does not inform us, and the information does not indicate, section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the city must withhold the submitted fingerprints under section 552.101 in conjunction with section 560.003.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public

Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Upon review, we find the Federal Bureau of Investigation (“FBI”) numbers we have marked consist of CHRI that is confidential under section 411.083. Thus, the city must withhold the marked FBI numbers under section 552.101 in conjunction with section 411.083 and federal law.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code. Section 1701.454 governs the public availability of information submitted to the Texas Commission on Law Enforcement (“TCOLE”) under subchapter J of chapter 1701 of the Occupations Code and provides as follows:

- (a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
- (b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The remaining information contains an F-5 Report of Separation of Licensee. The information at issue does not indicate the officer at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the submitted F-5 report under section 552.101 in conjunction with section 1701.454.

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. Accordingly, the city must withhold all visible license plates and all audible license plate numbers, driver’s license numbers, states of issuance, vehicle identification numbers, and the additional motor vehicle record information we marked and indicated under section 552.130.

In summary, as the requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. To the extent the city did not violate section 552.301 with respect to the information in case file I-21-05-0060, with the exception of the basic information, the city may withhold case file I-21-05-0060 under section 552.108(a)(2) of the Government Code. The city must withhold the information we marked and all

identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; however, pursuant to section 552.023 of the Government Code, the city must release the first requestor's date of birth to him. The city must withhold the submitted fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The city must withhold the marked FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The city must withhold the submitted F-5 report under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The city must withhold all visible license plates and all visible and audible license plate numbers, driver's license numbers, states of issuance, vehicle identification numbers, and the additional motor vehicle record information we marked and indicated under section 552.130 of the Government Code. The city must release the remaining information at issue to the requestors.³

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/eb

Ref: ID# 942635

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

³ We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).