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June 1, 2022

Ms. Aliceson Cotton
Counsel for the City of Wylie
Abernathy, Roeder, Boyd, Hullett
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75070-1210

OR2022-15686

Dear Ms. Cotton:

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# 950643.

The Wylie Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident.¹ The department claims the requestor did not properly request some of the submitted information pursuant to section 1701.661 of the Occupations Code. You claim the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the submitted information includes law enforcement 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:

(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;

¹ The department states it 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) 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). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701, our ruling does not reach this information and it need not be released. 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).

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 encompasses information that is made confidential by other statutes. The department raises section 552.101 in conjunction with section 418.181 of the Homeland Security Act (the “HSA”). Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. Section 418.182 provides, in relevant part,

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

A portion of the submitted information consists of security camera video footage. We understand the security camera at issue is part of a security system designed to protect private property from acts of terrorism or other criminal activity. You explain the recording at issue “identifies particular vulnerabilities as well as strong and weak points in design” of the security system at issue. Based on your representations and our review, we conclude the submitted surveillance camera footage is related to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (recorded images necessarily relate to

specifications of security system that recorded them, and thus, are confidential under section 418.182). Accordingly, the department must withhold the submitted security camera video footage under section 552.101 of the Government Code in conjunction with section 418.182(a) 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 Gov't Code* § 552.130. We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to his motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from them under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find the remaining video recordings contain information subject to section 552.130. You state the department does not have the technological capability to redact the motor vehicle record information from the recordings. Accordingly, the department must withhold the motor vehicle record information we marked and the video recordings we indicated in their entireties under section 552.130 of the Government Code.²

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). Thus, with the exception of the requestor's date of birth, to which the requestor has a right of access pursuant to section 552.023 of the Government Code, the department must 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); ORD 481 at 4.

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. *Gov't Code* § 552.1175. For purposes of section 552.1175, "family member" means a spouse, minor child, or adult child who resides in the person's home. *Cf. id.* § 552.117(c) ("family member" has meaning assigned by Fin. Code § 31.006(d)). Section 552.1175, applies, in part, to "current or honorably retired peace

² As our ruling is dispositive, we need not address your remaining argument against disclosure, and we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

officers as defined by Article 2.12, Code of Criminal Procedure[.]” Gov’t Code § 552.1175(a)(1)); *see id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). Upon review, we find the department has not established section 552.1175 is applicable to any of the remaining information. Thus, the department may not withhold any of the remaining information on that ground.

In summary, as the submitted body worn camera recordings were not properly requested pursuant to section 1701.661 of the Occupations Code, our ruling does not reach this information and it need not be released. The department must withhold the submitted security camera video footage under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. The department must withhold the motor vehicle record information we marked and the video recordings we indicated in their entirety under section 552.130 of the Government Code. With the exception of the requestor’s date of birth, to which the requestor has a right of access pursuant to section 552.023 of the Government Code, the department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department 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 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/mo

Ref: ID# 950643

Enc. Submitted documents

c: Requestor
(w/o enclosures)