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ATTORNEY GENERAL OF TEXAS

June 10, 2022

Mr. Robert G. Schleier, Jr.
Counsel for the City of Kilgore
Law Offices of Robert G. Schleier, Jr
116 North Kilgore Street
Kilgore, Texas 75662

OR2022-16711

Dear Mr. Schleier:

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# 953008.

The Kilgore Police Department (the "department"), which you represent, received two requests from the same requestor for all information pertaining to a specified motor vehicle accident involving the requestor's client. The department received a third request from different requestor for body worn camera recordings belonging to a named police officer, surveillance video from a specified entity, photographs, and witness statements pertaining to a specified motor vehicle accident involving the second requestor's client. The department states it released some of the requested information. The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information. We also received and considered comments from the first requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note the second requestor seeks only body worn camera recordings belonging to a named police officer, surveillance video from a specified entity, photographs, and witness statements. Accordingly, the remaining submitted information is not responsive to the second requestor's request. The department is not required to release this information to the second requestor in response to his request.

¹ Although the department does not cite to section 552.130 of the Government Code in its brief, we understand the department to raise this exception based on its markings.

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. This section encompasses information made confidential by other statutes. 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:

(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 first 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 of the Occupations Code, our ruling does not reach this information and it need not be released to the first requestor.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 second requestor includes the information required by section 1701.661(a) with respect to the responsive body worn camera recordings. *Id.* Accordingly, we find the second requestor properly requested the responsive body worn camera recordings at issue and we will address the department’s argument against their disclosure. However, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion . . . 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). The department state the responsive recordings pertain to the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. The department also states it has not received a written authorization for release from the subject of the recordings. *See id.* Accordingly, we find the department must withhold the responsive body worn camera recordings from the second

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

requestor 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 chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). We understand the department is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. The department states some of the information at issue consists of the originating telephone number of a 9-1-1 caller. Accordingly, to the extent the telephone number of the 9-1-1 caller was supplied by a 9-1-1 service supplier, the department must withhold the originating telephone number of the 9-1-1 caller it marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, we note the department has also marked the geographic coordinates of a 9-1-1 caller. Only originating addresses and telephone numbers are confidential under chapter 772 of the Health and Safety Code. Accordingly, the geographic coordinates of a 9-1-1 caller are not confidential under section 772.318 of the Health and Safety Code and the department may not withhold this information under section 552.101 of the Government Code on that basis.

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 court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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 requestors have a right of access to private information pertaining to their respective clients pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, except for the dates of birth belonging to the requestors' respective clients, which must be released to them, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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 of the Government Code 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. We note section 552.130 protects personal privacy. Accordingly, the requestors have a right of access to their respective clients' motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from them under section 552.130. *See id.* § 552.023(a); ORD

481 at 4. Accordingly, except for the motor vehicle record information pertaining to the requestors' respective clients, which must be released to them, the department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

In summary, the submitted body worn camera recordings were not properly requested by the first requestor pursuant to chapter 1701 of the Occupations Code and they need not be released to the first requestor. The department must withhold the responsive body worn camera recordings from the second requestor under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. To the extent the telephone number of the 9-1-1 caller was supplied by a 9-1-1 service supplier, the department must withhold the originating telephone number of the 9-1-1 caller it marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Except for the dates of birth belonging to the requestors' respective clients, which must be released to them, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the motor vehicle recording information pertaining to the requestors' respective clients, which must be released to them, the department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The department must release the remaining responsive information to these requestors.

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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/be

Ref: ID# 953008

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)