



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2022

Mr. Kevin Bailey
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2022-18344

Dear Mr. Bailey:

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# 955678 (ORR# M036825-040422).

The City of Midland (the "city") received a request for all information in a specified case. You claim some of the submitted information was not properly requested pursuant to section 1701.661(a) of the Occupations Code. You also claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you assert Exhibit C is not responsive to the instant request for information. However, upon review, we note the information at issue is maintained by the city and relates to the specified case. Accordingly, we find Exhibit C is responsive to the request. Thus, we will consider your arguments against disclosure.

Next, we note Exhibit B consists of peace 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 requestor does not give the requisite information under section 1701.661(a). As the requestor 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. 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).

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. We understand the city to assert Exhibit C is confidential under article 15.26 of the Code of Criminal Procedure, which is applicable to arrest warrants and affidavits for arrest warrants. Article 15.26 requires a magistrate’s clerk to make a copy of the arrest warrant affidavit available for public inspection or to provide a copy on payment of the cost of providing a copy. However, article 15.26 of the Code of Criminal Procedure does not make information confidential for purposes of section 552.101 of the Government Code. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information). Therefore, the city may not withhold Exhibit C under section 552.101 of the Government Code in conjunction with article 15.26 of the Code of Criminal Procedure. However, we note sections 552.101 and 552.130 of the Government Code make information confidential under the Act. Accordingly, we will also consider the applicability of these exceptions to Exhibit C.¹

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. *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, the city must withhold the suspect’s date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

¹ 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).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the city must withhold the suspect's driver's license number and state of issuance under section 552.130 of the Government Code.

In summary, as the requestor 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. The city must withhold the suspect's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the suspect's driver's license number and state of issuance under section 552.130 of the Government Code. The city must release the remaining information.²

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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jm

Ref: ID# 955678

c: Requestor

² We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. See Gov't Code § 552.023(a), (b) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (privacy theories not implicated when individual requests information concerning himself). Accordingly, if the city receives another request for this same information from a different requestor, it must first redact the motor vehicle record information pursuant to section 552.130(c) of the Government Code and the date of birth pursuant to the previous determination issued in Open Records Letter No. 2015-26022 (2015).