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ATTORNEY GENERAL OF TEXAS

July 13, 2022

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

OR2022-20137

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# 958465 (ORR# 3707876).

The Sherman Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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." Gov't Code § 552.101. 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). We note the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recordings at issue. We note, however, section 1701.661(c) and section 1701.661(d) provide:

(c) Except as provided by Subsection (d), information recorded by a body worn camera and held by a law enforcement agency under this subchapter is not subject to the requirements of Section 552.021, Government Code.

(d) Information that is or could be used as evidence in a criminal prosecution is subject to the requirement of Section 552.021, Government Code.

Id. § 1701.661(c)-(d). We understand you to state the submitted body worn camera recordings pertain to an incident where no criminal action is alleged to have occurred and will not be used in a criminal prosecution. Based on your representations and our review, we agree the submitted body worn camera recordings are confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 1701.661(c) of the Occupations Code.¹

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 requestor has a right of access to her own 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) (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). Thus, the department must withhold all audible and visible license plates and license plate numbers not belonging to the requestor in the remaining information under section 552.130 of the Government Code.

Section 552.101 of the Government Code also 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. Upon review, we find you have not demonstrated any of the

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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.

In summary, the department must withhold the submitted body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(c) of the Occupations Code. The department must withhold all audible and visible license plates and license plate numbers not belonging to the requestor under section 552.130 of the Government Code. The remaining information must be released.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,

Colin Henry
Attorney
Open Records Division

CEH/be

Ref: ID# 958465

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.