



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2022

Ms. Lauren Azopardi
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-21170

Dear Ms. Azopardi:

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# 960786 (Ref. No. E002727-042522).

The City of Fort Worth (the "city") received a request for the body worn camera recordings pertaining to a specified incident. You claim 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, we note a portion of the submitted information is not "public information" subject to disclosure under the Act. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We note some of the submitted information consists of information used solely for the purpose of maintenance, manipulation, or protection of public property and has no other significance. Upon review, we conclude the password information we have indicated is not "public information" for purposes of the Act, and the city is not required to release it in response to this request.¹

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. 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. We note the requestor provided the requisite information under section 1701.661(a) for release of the body worn camera recordings at issue. *See* Occ. Code § 1701.661(a). However, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion of a recording made in a private space . . . 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). Upon review, we find portions of the body worn camera recordings were made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). Accordingly, we find the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.²

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

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

² As our ruling is dispositive, we need not address your argument against disclosure of this information.

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 remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the information we have indicated is not subject to the Act and need not be released. The city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The city 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jm

Ref: ID# 960786

Enc. Submitted documents

c: Requestor
(w/o enclosures)