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ATTORNEY GENERAL OF TEXAS

August 25, 2022

Mr. Laurence E. Boyd
Counsel for the City of Oyster Creek
Law Office of Laurence E. Boyd
P.O. Box 269
Angleton, Texas 77516-0269

OR2022-25760

Dear Mr. Boyd:

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# 966121.

The City of Oyster Creek (the "city"), which you represent, received a request for the police report and all video footage pertaining to a stated case number.¹ You state the city released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note in a letter dated June 29, 2022, you state the city wishes to withdraw its request for an open records decision with regard to the requested police report because the requestor is satisfied with the information you provided and has withdrawn the portion of the request seeking the police report voluntarily. Thus, this ruling does not address the public availability of information the city no longer seeks to withhold.

¹ We note the city 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).

Next, you state the city released one of the submitted recordings to the requestor. Section 552.007 of the Government Code provides information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Therefore, the city may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. You claim portions of the previously released information are subject to sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code, which prohibit the release of information. Accordingly, we will consider the applicability of these sections for portions of the previously released information. Additionally, we will consider your arguments for the information not previously released.

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. Occ. Code § 1701.661(a). We determine the requestor provided the requisite information required by section 1701.661(a) of the Occupations Code. However, section 1701.661(f) provides:

A law enforcement agency may not release any portion a recording made in a private space, or 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). You state the video recordings at issue consist of body worn camera recordings that were made within a private space or pertains to the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. Upon review, however, we find you have failed to demonstrate the body worn camera recordings at issue were made in a private space for the purposes of section 1701.661(f). *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). Additionally, we note the recordings at issue involve an investigation of deadly conduct, which is a class A misdemeanor punishable by confinement in jail. *See* Penal Code §§ 12.21(2), 22.05(a), (e). Thus, we find you have failed to demonstrate the recordings at issue involve the investigation of conduct that constitutes a misdemeanor punishable by fine only. Therefore, the city may not withhold the submitted body worn camera recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

Section 552.130 of the Government Code excepts from public disclosure 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. *See* Gov't Code § 552.130. We note, because section 552.130 protects privacy interests, the requestor has a right of access to his motor vehicle record information pursuant to section 552.023 of the Government Code. *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). To the extent the motor vehicle record information at issue does not belong to the requestor, the city must withhold any audible or visible license plate, driver's license, driver's license numbers, and motor vehicle registration information within the submitted information under section 552.130 of the Government Code.²

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. Section 552.1175 applies, in part, to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *See id.* § 552.1175(a)(1). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.1175 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, to the extent the information at issue pertains to an individual who is subject to section 552.1175(a) of the Government Code and who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the city must withhold the audible cellular telephone number within the remaining information under section 552.1175 of the Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service.³

In summary, to the extent the motor vehicle record information at issue does not belong to the requestor, the city must withhold any audible or visible license plate, driver's license, driver's license numbers, and motor vehicle registration information within the submitted information under section 552.130 of the Government Code. To the extent the information at issue pertains to an individual who is subject to section 552.1175(a) of the Government Code and who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the city must withhold the audible cellular telephone number within the remaining information under section 552.1175 of the

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service. The city must release the remaining information to this requestor.⁴

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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 966121

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ 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); *see also* ORD 481 at 4. Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.