



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2022

Ms. Selena Treviño
Public Information Coordinator
City of South Padre Island
4601 Padre Boulevard
South Padre Island, Texas 78597

OR2022-27440

Dear Ms. Treviño:

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# 967886 (PIR 22-0620-01).

The City of South Padre (the "city") received a request for certain information pertaining to a specified arrest of a named individual. You state the city has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ 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. This section encompasses information made confidential by other statutes, such as section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.182 provides, in pertinent part:

¹ We note in a letter dated August 26, 2022, we asked the city to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the information submitted by the city on September 7, 2022, pursuant to that request.

(a) [I]nformation . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact information may be related to a security system does not make such information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting section 418.182 must adequately explain how the responsive records fall within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information at issue contains a surveillance camera video recording from the city’s Paul Y. Cunningham Jr. City Hall Building, from which you explain the city’s police department operates. You also state the recording at issue is from a surveillance camera that is part of the city’s security system, which is used to protect city buildings and employees from acts of terrorism or related criminal activity. You assert release of the recording at issue “would reveal information relating to the specifications of the security system that could be used to identify and exploit weaknesses in the security system.” Further, you assert release of the recording at issue would “jeopardize the [c]ity’s ability to utilize the tactical response to a threat in this area and compromise the safety of staff and other prisoners.” Based on your representations and our review, we find the surveillance video recording at issue relates to the location and specifications of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep’t of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras’ capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Accordingly, the city must withhold the surveillance video recording we have indicated under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.²

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. Upon review, we note the remaining video recordings, which we have indicated, contain audible and visible motor vehicle record information that

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

is subject to section 552.130. You state the city lacks the technological capability to redact the information subject to section 552.130 from the video recordings at issue. Based upon this representation, we agree the city must withhold the video recordings we have indicated in their entireties under section 552.130 of the Government Code.³ See Open Records Decision No. 364 (1983). Additionally, the city must withhold the information we have marked under section 552.130 of the Government Code. However, none of the remaining information consists of motor vehicle record information subject to section 552.130, and no portion of it may be withheld on that basis.

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. Further, the Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *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.). Accordingly, the city must withhold the dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must withhold the surveillance video recording we have indicated under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code. The city must withhold the video recordings we have indicated in their entireties and the information we have marked under section 552.130 of the Government Code. The city must withhold the dates of birth within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

³ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. Additionally, as we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the video recordings at issue. See generally Occ. Code § 1701.661(a), (e).

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 967886

Enc. Submitted documents

c: Requestor
(w/o enclosures)