



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 27, 2022

Mr. William L. Tatsch
Assistant City Attorney
City of Kerrville
701 Main Street
Kerrville, Texas 78028

OR2022-29872

Dear Mr. Tatsch:

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# 974235.

The City of Kerrville (the "city") received a request for information pertaining to a specified incident involving a named individual. You state you have released some information. You claim 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.

Initially, we note the submitted information includes police 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 provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released.¹ However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (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 552.130 excepts from disclosure 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. Upon review, we find the remaining video recordings contain motor vehicle record information. In this instance, the city states it does not possess the technological capability to redact information from video files. Thus, we agree the city must withhold the entireties of the remaining video recordings under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

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. Section 552.101 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.). Upon review, we note the remaining audio recordings at issue contain dates of birth. You argue the city lacks the technological capability to redact these dates of birth from the audio recordings at issue. However, because the city had the ability to copy the audio recordings at issue in order to submit the requested information for our review, we believe the city has the capacity to produce a copy of only the non-confidential portion of it. Therefore, the city may not withhold the entirety of the remaining audio recordings on that ground. Accordingly, the city must withhold the dates of birth of public citizens within the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, as the body worn camera recordings at issue were not properly requested pursuant to section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the city need not release it. The city must withhold the entireties of the remaining video recordings under section 552.130 of the Government Code. The city must withhold the dates of birth of public citizens 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.

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

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/pt

Ref: ID# 974235

Enc. Submitted documents

c: Requestor
(w/o enclosures)