



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2022

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2022-32028

Dear Ms. Thomas:

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# 978786 (Ref. No. 22-2203).

The City of Temple (the "city") received a request for certain information pertaining to a specified incident. You claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information includes city 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(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). 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 section 1701.661(a) of the Occupations Code, our ruling does not reach this information and the city need not release it.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).

Next, we note some of the remaining information, which we have marked, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2022-22035 (2022). In that ruling, we determined that the city must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy and must release the remaining information. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Thus, the city must continue to rely on Open Records Letter No. 2022-22035 as a previous determination and withhold or release the information we have marked in accordance with that ruling.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, we note the public has a legitimate interest in the details of a crime. *See* Open Records Decision No. 400 at 4 (1983). *See generally* *Lowe v. Hearst Commc’ns, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting “legitimate public interest in facts tending to support an allegation of criminal activity” (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994))). 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.

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

² As we are able to make this determination, we need not address your argument against disclosure of this information.

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 continue to rely on Open Records Letter No. 2022-22035 as a previous determination and withhold or release the information we have marked in accordance with that ruling. 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/pt

Ref: ID# 978786

Enc. Submitted documents

c: Requestor
(w/o enclosures)