



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 20, 2022

Ms. Karen Stack
Legal & Legislative Services Manager
City of Brenham
P.O. Box 1059
Brenham, Texas 77834-1059

OR2022-32409

Dear Ms. Stack:

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# 979659 (COB ID# 22-07-44).

The City of Brenham (the "city") received a request for information pertaining to a specified investigation.¹ The city states it has released some information to the requestor. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted representative sample of information.²

Initially, we note the submitted information includes a police officer's body worn camera recording. 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:

¹ As the city has not submitted a copy of the request for information, we take our description from its brief.

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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, we are not able to determine whether the requestor provided the requisite information under section 1701.661(a). Thus, we rule in the alternative. To the extent the requestor did not provide the requisite information under section 1701.661(a), the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code. In that instance, our ruling does not reach the body worn camera recording and the city need not release it.³ However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (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). To the extent the requestor did provide the requisite information under section 1701.661(a), we will consider the city’s argument against disclosure of the submitted body worn camera recording.

Next, we must address the city’s obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov’t Code § 552.301. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The city states it received the request for information on July 26, 2022. However, as of this date, the city has not submitted to this office a copy of the written request for information. Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302;

³ In this instance, as we are able to make this determination, we need not address the city’s argument against disclosure of this information.

Simmons v. Kuzmich, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The city claims sections 552.101 and 552.108 of the Government Code for the submitted information. Although the city claims section 552.101 of the Government Code in conjunction with the common-law informer's privilege and section 552.108 of the Government Code for the submitted information, we find the city has failed to establish a compelling reason to address these arguments. However, because section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and common-law privacy, as well as sections 552.1175, 552.130, and 552.137 of the Government Code, can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of these exceptions to the submitted information.⁴

After reviewing the information at issue, we have determined no novel or complex issue exists in the submitted information. Thus, we address the applicable exceptions in a summary ruling.

The city must withhold the submitted fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The city must withhold the information we have indicated and the public citizen's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the officer at issue elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we have marked and indicated under section 552.1175 of the Government Code. The city must withhold the motor vehicle record information we have marked and all audible and visible driver license, license plate, and registration stickers in the submitted video recordings under section 552.130 of the Government Code. The city must withhold the personal e-mail address in the remaining information under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The city must release the remaining information.⁵

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

⁴ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵ The information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 979659

Enc. Submitted documents

c: Requestor
(w/o enclosures)