



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 27, 2014

Mr. C. Tyler Atkinson  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2014-01564

Dear Mr. Atkinson:

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# 511954 (Fort Worth PIR No. W028350).

The City of Fort Worth (the "city") received a request for all body camera videos or recordings where officers used force against a citizen.<sup>1</sup> You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 the doctrines of constitutional and common-law privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education.

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<sup>1</sup>You state the requestor modified his request in response to a cost estimate. *See* Gov't Code § 552.263(e-1) (modified request is considered received on the date the governmental body receives the written modification).

*Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the portions of the submitted video recordings that contain images of an unclothed or partially unclothed body implicate an individual's privacy interests for purposes of constitutional privacy and the city must withhold these portions of the video recordings under section 552.101 of the Government Code in conjunction with constitutional privacy. However, we find you have failed to demonstrate any remaining portions of the video recordings fall within the zones of privacy or implicate an individual's privacy interests for purposes of constitutional privacy and the city may not withhold those portions under section 552.101 on that basis.

Common-law privacy 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* ORD 455. Upon review, we find some of the remaining portions of the submitted video recordings satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the portions of the video recordings we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining portions of the video recordings are highly intimate or embarrassing and of no legitimate public interest. Thus, those portions of the video recordings may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining portions of the submitted video recordings contain information subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle title or registration issued by an agency of this state or another state or country is excepted from public release.<sup>2</sup> Gov't Code § 552.130(a)(2). Upon review, we find the city must withhold the discernible license plate numbers in the remaining portions of the video recordings under section 552.130 of the Government Code.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

In summary, the city must withhold (1) the portions of the video recordings that contain images of an unclothed or partially unclothed body under section 552.101 of the Government Code in conjunction with constitutional privacy, (2) the portions of the video recordings we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy, and (3) the discernible license plate numbers in the remaining portions of the video recordings under section 552.130 of the Government Code. 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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/akg

Ref: ID# 511954

Enc. Submitted documents

c: Requestor  
(w/o enclosures)