



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2016

Ms. Paige Mebane
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-07229A

Dear Ms. Mebane:

Our office issued Open Records Letter No. 2016-07229 (2016) on March 31, 2016. Since that date, we have received additional information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on March 31, 2016. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")). You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 616649.

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.1175 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. The submitted information contains recordings from a body worn camera. 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:

¹We note the city failed to comply with section 552.301 of the Government Code in requesting a ruling on a portion of the information at issue. However, sections 552.101 and 552.1175 of the Government Code are mandatory exceptions that constitute compelling reasons to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the city's arguments under sections 552.101 and 552.1175.

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 give the requisite information under section 1701.661(a) for some of the submitted body worn camera recordings. As the requestor did not properly request the body worn camera recordings in supplements C1, C2, and C3 pursuant to chapter 1701, our ruling does not reach this information and it need not be released.² 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).

In this instance, the requestor provides the requisite information for the remaining body worn camera recordings. You indicate the recordings at issue were required to be made by law or the policies of the city’s police department and the recordings relate to a law enforcement purpose. *See id.* § 1701.661(h). Further, you indicate the recordings are or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Additionally, we have no indication the recordings at issue document an incident that involves the use of deadly force by an officer or relates to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). We note, however, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion of a recording made in a private space . . . without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person’s authorized representative.

Id. § 1701.661(f). Upon review, we find portions of the remaining information consist of body worn camera recordings made in a private space. *See id.* § 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). The city states it does not have written authorization for release from the subjects of the recordings made in the private space. *See id.* § 1701.661(f). Accordingly, we find the city must withhold the information you have indicated in its entirety under section 552.101 of the Government Code in conjunction with

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

section 1701.661(f) of the Occupations Code.³ However, we find the city has failed to demonstrate the remaining information at issue consists of recordings made in a private space for purposes of section 1701.661(f). Therefore, the remaining information is not confidential under section 1701.661(f) of the Occupations Code, and the city may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Thus, to the extent the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information we have marked and the information you have indicated under section 552.1175 of the Government Code. If the peace officer does not elect to restrict access to the information in accordance with section 552.1175(b), the information we have marked and the information you have indicated may not be withheld under section 552.1175.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is 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 elements of this test must be established. *Id.* at 681-82. Types of information considered highly intimate or 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).

Generally, only highly intimate information implicating the privacy of an individual is withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved, as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. In this instance, although you seek to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy, we find this is not a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. However, we find the submitted information contains information which satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information the information we have marked under section 552.101 of the Government Code

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

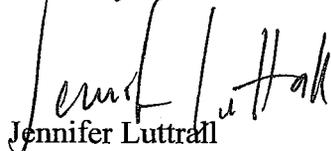
in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, as the requestor did not properly request the body worn camera recordings in supplements C1, C2, and C3, pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The city must withhold the information you have indicated in its entirety under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. To the extent the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information we have marked and the information you have indicated under section 552.1175 of the Government Code. The city must withhold the information we have marked 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.

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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 616649

Enc. Submitted documents

c: Requestor
(w/o enclosures)