



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 4, 2016

Ms. Cynthia Trevino
Counsel for the City of Pflugerville
Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C.
2500 West William Cannon Drive, Suite 609
Austin, Texas 78745

OR2016-07527

Dear Ms. Trevino:

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# 604356.

The City of Pflugerville (the "city"), which you represent, received a request for all police information pertaining to the requestor and a named individual during a specified time period. You state you will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 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 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:

¹Section 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).

- (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). As the requestor did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. 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).

Section 552.101 of the Government Code excepts “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, 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. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public.

Upon review, we find the present request requires the city to compile unspecified law enforcement records concerning the named individual other than the requestor. We find this part of the request generally implicates the other named individual’s right to privacy. However, we note the requestor also asks for all information held by the city concerning himself. This part of the request seeks specified records involving the requestor. Further, the requestor has a right of access to his own private information pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, information relating to the requestor may not be withheld from him as a compilation of criminal history under section 552.101 in conjunction with common-law privacy. Accordingly, with the exception of the reports involving the requestor, to the extent the city maintains law enforcement records depicting the other named individual as a suspect,

arrestee, or criminal defendant, the city must withhold such information under section 552.101 in conjunction with common-law privacy.

Next, we note some of the information at issue was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-00648 (2016). In that ruling, we determined the city may withhold the information at issue under section 552.108(a)(1) of the Government Code. While you previously represented the information at issue related to an open investigation subject to section 552.108(a)(1) of the Government Code, you now inform us the investigation is concluded and claim section 552.108(a)(2) of the Government Code. Thus, we find the circumstances have changed and the city may not rely on Open Records Letter No. 2016-00648 as a previous determination in this instance. Accordingly, we will consider your argument under section 552.108(a)(2) of the Government Code for the information previously ruled upon in Open Records Letter No. 2016-00648.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert report number 15120290 constitutes information that was used or developed in an investigation conducted under chapter 261 of the Family Code. However, upon review, we find city has not demonstrated report number 15120290 was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Accordingly, the city may not withhold report number 15120290 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See Gov’t Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result

other than a conviction or deferred adjudication. *See id.*; *see also id.* § 552.301(e)(1)(A). You state Exhibits D and D4 pertain to cases that concluded in results other than convictions or deferred adjudications. Based on your representations, we find section 552.108(a)(2) is applicable to the information at issue.

However, as you acknowledge, section 552.108(a)(2) of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559, 560-61 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the city may withhold Exhibits D and D4 from disclosure under section 552.108(a)(2).²

We understand you to claim the remaining information is excepted from required disclosure under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119. Upon review, we conclude you have made only vague assertions of risk of harm that could result from the disclosure of any of the remaining information. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with the common-law physical safety exception.

You state you will redact motor vehicle information pursuant to section 552.130(c) of the Government Code.³ Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). You state the city lacks the technological capability to redact the motor vehicle information contained in the remaining video recordings at issue. Upon review, we find the city must withhold the remaining video recordings we have marked in their entirety under section 552.130. *See* Open Records Decision No. 364 (1983).

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

³We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

In summary, pursuant to section 1701.661 of the Occupations Code, the submitted body worn camera recordings need not be released to the requestor. With the exception of the reports involving the requestor, to the extent the city maintains law enforcement records depicting the other named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, the city may withhold Exhibits D and D4 from disclosure under section 552.108(a)(2) of the Government Code. The city must withhold the remaining video recordings in Exhibit D3 in their entirety under section 552.130 of the Government Code. The basic information within Exhibits D and D4 must be released.

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 604356

Enc. Submitted documents

c: Requestor
(w/o enclosures)