



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2016

Ms. Cynthia Trevino
Counsel for City of Pflugerville
Denton Navarro Rocha Bernal Hyde & Zach, P.C.
2500 West William Cannon, Suite 609
Austin, Texas 78745-5320

OR2016-15505

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# 617450.

The City of Pflugerville (the "city"), which you represent, received a request for information concerning a specified traffic stop and the Pflugerville Police Department's (the "department") use of force guidelines. You state the city released some information with redactions under section 552.130 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.

The submitted information contains a body-worn camera recording. That recording is subject to chapter 1701 of the Occupations Code, which provides the procedures a requestor must follow when seeking a body-worn camera recording. Section 1701.661(a) provides:

¹Section 552.130 of the Government Code authorizes a governmental body to redact motor vehicle record information without a ruling from this office. *See* Gov't Code § 552.130(c)–(e). If a governmental body redacts such information, it must notify the requestor. *See id.* § 552.130(d), (e).

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). The requestor has not provided the required information under section 1701.661(a) of the Occupations Code. As the requestor did not properly request the body-worn camera recording pursuant to chapter 1701 of the Occupations Code, 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 from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses 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. *See id.* at 681–82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). In considering whether a member of the public’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure.² *Tex. Comptroller*, 354 S.W.3d at 347–48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to members of the public, and thus, dates of birth of members of the public are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015

²Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).

WL 3394061, at *3. Accordingly, the city must withhold the information you marked and all dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Section 552.108(a)(1) protects information if its release would interfere with a particular pending criminal investigation or prosecution. Section 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body claiming subsections 552.108(a)(1) and (b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code § 552.301(e)(1)(A)*; *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2–3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The submitted information contains the department's policies and procedures concerning the use of force. You contend disclosure this information would interfere with law enforcement objectives by revealing to the public the type of conduct an officer must tolerate before using force. You state this knowledge could provide individuals with an advantage in confrontations with police and place police officers and the public at risk. Based on your representations and our review, we find the information we marked would interfere with law enforcement. Accordingly, the city may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate release of any portion of the remaining information would interfere with law enforcement or prosecution efforts in general. Accordingly, the city may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code. Further, you have failed to explain release of the remaining information would interfere with a particular pending criminal investigation or prosecution. Accordingly, the city may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle operator's or driver's license or permit and a motor vehicle title or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1), (2). You state the city lacks the technological capability to redact this information. However, because the city had the ability to copy the submitted audio recordings for our review, we believe the city has the capability to produce a copy of only the non-confidential portions of the audio recording. Accordingly, the city must withhold the motor vehicle record information you marked and the information we marked under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). The city may not withhold the remaining portions of the audio recording under section 552.130 of the Government Code.

In summary, as the requestor did not properly request the body-worn camera recording 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 marked and all dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the information we marked under section 552.108(b)(1) of the Government Code. The city must withhold the motor vehicle record information you marked and the information we marked 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, 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,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large initial "N" and "F".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 617450

Enc. Submitted documents

c: Requestor
(w/o enclosures)