



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 25, 2017

Ms. T. Trisha Dang
Assistant City Attorney
City of Sugar Land
P.O. Box 110
Sugar Land, Texas 77487-0110

OR2017-01705

Dear Ms. Dang:

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# 643023 (ORR# W001026).

The Sugar Land Police Department (the "department") received a request for a specified video pertaining to a specified traffic accident. 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 information made confidential by other statutes. We note the submitted information consists of a recording from a department officer's body worn camera. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code provides:

(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). You claim that the requestor did not provide the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recording at issue. We note we asked the department to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the information submitted by the department pursuant to that request. Upon our review of the submitted information and the department's response, we determine the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recording at issue. We understand the submitted recording was required to be made by law or the policies of the department and the recording relates to a law enforcement purpose. *See* Occ. Code § 1701.661(h). We understand the recording is or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Additionally, we have no indication the recording documents 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). The submitted recording demonstrates it was not made in a private space for the purposes of section 1701.661(f). *See id.* §§ 1701.661(f), .651(3) (defining "private space" for purposes of section 1701.661(f)). We note, however, section 1701.661(f) provides, in relevant part:

A law enforcement agency may not release any portion . . . of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, 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 are unable to determine whether the submitted recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, we must rule conditionally. If the submitted recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, we note there is no indication the department has received written authorizations for release from all of the subjects of the recording. Accordingly, the submitted recording is confidential and must be withheld under section 552.101 in conjunction with section 1701.661(f). However, if the submitted recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, no portion of the recording is confidential under section 1701.661(f) and it may not be withheld under section 552.101 on that basis.

In that instance, we will address the applicability of sections 552.101, 552.130, and 552.136 of the Government Code.¹

Section 552.101 also encompasses common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas 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 established. *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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally private. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we find the information we have indicated meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. We note, however, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to his client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the department must withhold the visible license plates not belonging to the requestor's client in the submitted video recording under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of

¹This office 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).

section 552.136. *See* Open Records Decision No. 684 (2009). Accordingly, the department must withhold the insurance policy number we have indicated under section 552.136 of the Government Code.

In summary, if the submitted recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the department must withhold the submitted recording under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the submitted recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the department must (1) withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the visible license plates not belonging to the requestor's client in the submitted video recording under section 552.130 of the Government Code; (3) withhold the insurance policy number we have indicated under section 552.136 of the Government Code; and (4) 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/sdk

Ref: ID# 643023

Enc. Submitted documents

c: Requestor
(w/o enclosures)