



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 8, 2017

Mr. Peter G. Smith  
City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2017-09899

Dear Mr. Smith:

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# 656825 (City Ref. No. 17-137).

The City of Richardson (the "city") received a request for the 9-1-1 audio recording, call sheet, photographs, video recordings, and body camera video recordings pertaining to a specified incident. You state you will redact dates of birth of certain public citizens pursuant to the previous determination issued in Open Records Letter No. 2017-00069 (2017).<sup>1</sup> You assert some of the submitted information was not properly requested pursuant to chapter 1701 of the Occupations Code. You claim the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information includes a law enforcement officer's body worn camera recordings, which you assert is not subject to the Act. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code provides:

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<sup>1</sup>Open Records Letter No. 2017-00069 authorized the city's police department to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision.

(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 the requestor did not provide the information required by section 1701.661(a) of the Occupations Code. Upon our review of the submitted information, we determine the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recordings at issue. The submitted recordings reflect they were required to be made by law or the policies of the city's police department and relate to a law enforcement purpose. *See id.* § 1701.661(h). We understand the recordings are or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d) (stating information "that is or could be used as evidence in a criminal prosecution is subject to the requirements of [the Act.]"). Additionally, we have no indication the recordings 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). The submitted recordings demonstrate they were 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 recordings at issue involve 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 body worn camera recordings involve 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 city has received written authorizations for release from all of the subjects of the recordings. Accordingly, in this instance, the submitted body worn camera recordings are confidential and must be withheld under section 552.101 in conjunction with section 1701.661(f). However, if the submitted body worn camera recordings do not involve an investigation of

conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, no portion of the recordings are confidential under section 1701.661(f) and they may not be withheld under section 552.101 on that basis. In that instance, we will consider whether the information at issue may be withheld under the Act.

Section 552.1175 of the Government Code 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.<sup>2</sup> 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). Some of the information at issue pertains to individual who was a licensed peace officer with the city's police department but the information is not held by the city in an employment capacity. Thus, to the extent the officer at issue elects to restrict access to the information we indicated in accordance with section 552.1175(b), the city must withhold the information we indicated under section 552.1175 of the Government Code. Conversely, if the officer at issue does not elect to restrict access to the information in accordance with section 552.1175(b), the city may not withhold this information under section 552.1175 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision No. 600 (1992) (personal financial information includes choice of a particular insurance carrier). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Upon review, we conclude the information we have indicated meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must generally withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the information we indicated pertains to an individual whose

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<sup>2</sup>The Office of the Attorney General 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).

identity may be protected under section 552.1175 of the Government Code. In that instance, the information at issue relates to an individual who has been de-identified and whose privacy interest is thus protected, and the city may not withhold that information under section 552.101 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(a). We note section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from her. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, with the exception of the information we marked for release, the city must withhold the motor vehicle record information it marked under section 552.130 of the Government Code. Further, with the exception of the motor vehicle record information belonging to the requestor's client, the city must withhold the audible and discernable motor vehicle record information in the video recordings under section 552.130.

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 section 552.136. Accordingly, the city must withhold the insurance policy number we indicated under section 552.136 of the Government Code.

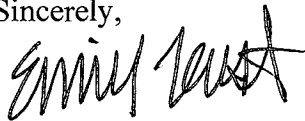
In summary, to the extent the submitted body worn camera video recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the city must withhold the recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. To the extent the officer at issue elects to restrict access to the information we indicated in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we indicated under section 552.1175 of the Government Code. To the extent the information we indicated pertains to an individual who has not been de-identified, the city must withhold the indicated information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release and the motor vehicle record information belonging to the requestor's client, the city must withhold the motor vehicle record information it marked and the audible and discernable motor vehicle record information in the video recordings under section 552.130

of the Government Code. The city must withhold the insurance policy number in the video recording under section 552.136 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,

A handwritten signature in black ink, appearing to read "Emily Kunst". The signature is written in a cursive, somewhat stylized font.

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/eb

Ref: ID# 656825

Enc. Submitted documents

c: Requestor  
(w/o enclosures)