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ATTORNEY GENERAL OF TEXAS

May 16, 2017

Ms. Vanessa A. Gonzalez
Counsel for Southern Methodist University
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3711 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2017-10590

Dear Ms. Gonzalez:

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# 658096.

Southern Methodist University (the "university"), which you represent, received two requests from different requestors for the police report and body worn camera recordings related to a specified incident. You state you have released some information to the requestors. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a university police officer's body worn camera recording. 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:

- (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 requestors do not give the requisite information under section 1701.661(a). As the requestors did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.¹ 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 requestors from making a future request for the same recorded information.” *Id.* § 1701.661(b).

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. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). You assert the dates of birth in the remaining information are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note both requestors have a special right of access to their own date of birth under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Furthermore, we note some of the dates of birth in the remaining information are fraudulent. Accordingly, we find the university must withhold the actual dates of birth, other than the dates of birth belonging to the respective requestors, 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 a personal identification document issued by an agency of this state or another state or country is excepted from public release.² Gov’t Code § 552.130(a). We note section 552.130 protects privacy interests. Therefore, each requestor has a right of access to his own driver’s license

¹As we are able to make this determination, we need not address your argument against disclosure of this information.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information pursuant to section 552.023 and this information may not be withheld from them under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Further, we note the submitted information indicates some of the driver's license information at issue is fraudulent and invalid. Therefore, none of this information may be withheld under section 552.130. However, the university must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states "Notwithstanding 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). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). You state the student identification numbers in the remaining information are used in "a variety of transactions that involve the transfer of funds and information of value[.]" Based on this representation, we find the student identification numbers at issue are access device numbers for purposes of this exception. However, the purpose of section 552.136 is to protect the privacy interests of individuals. Thus, each requestor has a right of access to his own access device number under section 552.023 of the Government Code and it may not be withheld from him under section 552.136. *See id.* § 552.023(a); ORD 481 at 4. Therefore, the university must withhold the student identification numbers we have marked under section 552.136 of the Government Code.³

In summary, pursuant to section 1701.661 of the Occupations Code, the submitted body worn camera recording was not properly requested pursuant to chapter 1701 of the Occupations Code and it need not be released. The university must withhold: (1) the actual dates of birth, other than the dates of birth belonging to the respective requestors, under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under section 552.130 of the Government Code; and (3) the student identification

³Although you ask this office to issue a previous determination allowing the university to redact this information under section 552.136 without the necessity of requesting a decision from this office, we note subsection (c) of section 552.136 already allows a governmental body to redact such information without the necessity of requesting a decision from this office. *See* Gov't Code § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor).

numbers we have marked under section 552.136 of the Government Code. The university must release the remaining information.⁴

Finally, you ask this office to issue a previous determination permitting the university to withhold information public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 658096

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

⁴We note the remaining information contains a social security number. Section 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 under the Act. *See* Gov't Code § 552.147(b). Furthermore, we note both requestors have a special right of access to some of the information being released. *See id.* § 552.023(a); ORD 481 at 4. Thus, if the university receives another request for this information from a different requestor, then the university must again seek a decision from this office.