



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2017

Chief Greg Minton
Chief of Police
City of Leander Police Department
705 Leander Drive
Leander, Texas 78641

OR2017-11071

Dear Chief Minton:

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# 661152.

The Leander Police Department (the "department") received a request for information pertaining to a specified collision. The department states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.130 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted information.

Initially, we note the submitted information includes a body worn camera recording of a department officer. 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 the following:

¹We note the department did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987). Therefore, we will consider the applicability of those sections to the information at issue.

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 does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information and the department is not required to release it.² 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 552.130 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. The submitted dash-cam recording contains motor vehicle record information that is subject to section 552.130. The department states it lacks the technical capability to redact the information subject to section 552.130 from the recording at issue. Based on this representation, we agree the department must withhold the submitted dash-cam recording in its entirety under section 552.130. The department must also withhold the motor vehicle record information we have marked in the remaining documents under section 552.130 of the Government Code. However, the remaining information is not confidential under section 552.130, and the department may not withhold it on that ground.

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 Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*,

²As our ruling is dispositive, we do not address the arguments of the department to withhold this information.

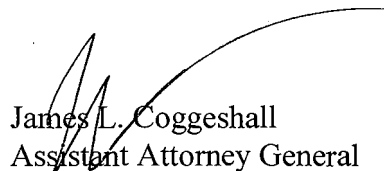
No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the department must withhold all public citizens' dates of birth in the remaining documents under section 552.101 of the Government Code in conjunction with common-law privacy.

To conclude, because the requestor did not properly request the submitted body worn camera recording pursuant to chapter 1701, our ruling does not reach the body worn camera recording at issue and the department is not required to release it. The department must withhold the following: (1) the submitted dash-cam recording in its entirety under section 552.130 of the Government Code; (2) the information we have marked in the remaining documents under section 552.130 of the Government Code; and (3) all public citizens' dates of birth in the remaining documents under section 552.101 of the Government Code in conjunction with common-law privacy. The department 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 661152

Enc. Submitted documents

c: Requestor
(w/o enclosures)