



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 8, 2017

Ms. Linda Haley
Records Supervisor
City of Leander
705 Leander Drive
Leander, Texas 78641

OR2017-12630

Dear Ms. Haley:

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# 661157.

The Leander Police Department (the "department") received a request for information pertaining to an accident involving the requestor's client. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.130 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requested information includes department body worn camera video. 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:

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, section 552.130 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. Therefore, we will consider the applicability of this section to the information at issue.

- (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 requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera video at issue pursuant to chapter 1701, 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 552.130 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 section 552.130 protects personal privacy. We further note the motor vehicle record information we have marked may belong to the requestor’s client, and, as such, the requestor may have a right of access to such information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, because we are unable to determine whether the information at issue belongs to the requestor’s client, we must rule conditionally. To the extent the motor vehicle record information we marked belongs to the requestor’s client, the department may not withhold it under section 552.130. To the extent the motor vehicle record information we marked does not belong to the requestor’s client, the department must withhold it under section 552.130 of the Government Code. You state the department does not have the technological capability to redact the motor vehicle record information from the remaining video recordings. Accordingly, the department must withhold the remaining video recordings in their entireties under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² 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

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, 480 (1987), 470 (1987).

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.). However, we note the requestor has a right of access to her client's date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, with the exception of the requestor's client's date of birth, the department must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code.

In summary, pursuant to section 1701.661 of the Occupations Code, as the requestor did not properly request the body worn camera video at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information, and the department need not release the submitted body camera video at issue in response to this request for information. To the extent the motor vehicle record information we marked does not belong to the requestor's client, the department must withhold it under section 552.130 of the Government Code. The department must withhold the remaining video recordings under section 552.130. With the exception of the requestor's client's date of birth, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code. The remaining information must be released.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 661157

Enc. Submitted documents

c: Requestor
(w/o enclosures)