



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 30, 2017

Ms. Ileana Fernandez
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2017-14723

Dear Ms. Fernandez:

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# 664019.

The Mesquite Police Department (the "department") received a request for information pertaining to a specified incident. You state you will release some information to the requestor. You state the department will redact public citizens' dates of birth pursuant to Open Records Letter No. 2015-24970 (2015).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information consists of an 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:

¹Open Records Letter No. 2015-24970 authorizes the department to withhold public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

- (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 recording at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.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 552.101 of the Government Code exempts 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 chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the department maintains, except that the department may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the department or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from the department or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Upon review, we agree the information you have indicated consists of CHRI that is confidential under section 411.083. Thus, the department must withhold the information you have indicated under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the

²As we are able to make this determination, we need not address the arguments against disclosure of this information.

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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). Upon review, we find the information you have indicated, and the additional information we have indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note some of the information at issue may belong to the requestor's client. The requestor has a right of access to private information belonging to her client pursuant to 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 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). Therefore, to the extent the information you have indicated pertains to the requestor's client, it may not be withheld under section 552.101 in conjunction with common-law privacy. Accordingly, with the exception of any private information that may belong to the requestor's client, the department must withhold the information you have indicated and we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

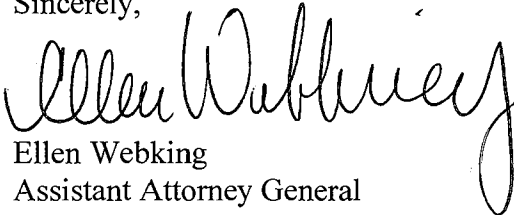
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we find portions of the remaining information consist of motor vehicle record information. Thus, the department must generally withhold all discernible motor vehicle information from the remaining recordings under section 552.130 of the Government Code. However, we note section 552.130 protects privacy. In this instance, the requestor may have a right of access to some of the motor vehicle record information at issue under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. To the extent the motor vehicle record information in the submitted recordings belongs to the requestor's client, she has a right of access under section 552.023 to this information, and the department may not withhold such information under section 552.130 from the requestor. To the extent the motor vehicle record information at issue does not belong to the requestor's client, the department must withhold the discernible and audible motor vehicle record information in the remaining recordings under section 552.130 of the Government Code.

In summary, 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 it need not be released. The department must withhold the information you have indicated under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. With the exception of any private information that may belong to the requestor's client, the department must withhold the information you have indicated and we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record information at issue does not belong to the requestor's client, the department must withhold the discernible and audible motor vehicle record information in the remaining recordings under section 552.130 of the Government Code. 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 664019

Enc. Submitted documents

c: Requestor
(w/o enclosures)