



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2017

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

OR2017-15143

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# 665216 (17-303).

The Richardson Police Department (the "department") received a request for information pertaining to a specified incident. You state you have released some information, including the CR-3 crash report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). You state you will withhold dates of birth pursuant to Open Records Letter No. 2017-00069 (2017).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

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

¹Open Records Letter No. 2017-00069 is a previous determination allowing the 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 a decision from this office.

²Although you do not explicitly raise section 552.101 of the Government Code, we understand you to raise this exception based on the substance of your arguments.

Code § 552.101. This section encompasses information made confidential by other statutes. We note the submitted information consists of a video recording from a department police officer's body worn camera. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code states the information a requestor must provide when seeking a body worn camera recording. *See* Occ. Code § 1701.661(a). We note the requestor provides the requisite information for the body worn camera recording at issue. We understand the submitted recording was required to be made by law or the policies of the department and the recording relates to a law enforcement purpose. *See id.* § 1701.661(h). We also understand the recording at issue is or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Additionally, we have no indication the recording documents 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). Section 1701.661(f) provides:

A law enforcement agency may not release any portion of a recording made in a private space, or 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 recording at issue involves 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 body worn camera recording at issue involves 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 department has received written authorizations for release from all of the subjects of the recording. Accordingly, in this instance, the submitted body worn camera recording is confidential and must be withheld in its entirety under section 552.101 in conjunction with section 1701.661(f) of the Occupations Code. However, to the extent the submitted body worn camera recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, we will address the private space aspect of section 1701.661(f) of the Occupations Code.

As previously noted, section 1701.661(f) prohibits the release of body worn camera recordings made in a private space without proper authorization from the person who is the subject of that portion of the recording. *Id.* Upon review, we find a portion of the submitted video recording was made in a private space. *See id.* § 1701.651(3) (defining "private space" for purposes of section 1701.661(f)). However, we note the subject of the portion of the video recording in a private space is the requestor's client and has consented to release of the information at issue. Accordingly, if the submitted body worn camera recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the department may not withhold any portion of the submitted

information under section 552.101 of the Government Code in conjunction with section of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 600 (1992) (personal financial information includes choice of a particular insurance carrier). However, we note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990). Furthermore, the requestor has a right of access to her client's information that would otherwise be private under common-law privacy. *See* Gov't Code § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the 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 himself).

Upon review, we are unable to determine if the insurance companies named in the submitted information are the choice of individuals or of corporate or other business entities. Thus, we must rule conditionally. To the extent the insurance companies are the choice of individuals and not corporate or other business entities, the department must withhold the names of insurance companies that do not belong to the requestor's client under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the insurance companies are the choice of corporate or other business entities, the department may not withhold the names of insurance companies 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(a). Portions of the submitted

information contain information subject to section 552.130. Because section 552.130 protects personal privacy, the requestor has a right of access to motor vehicle record information of her client pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Thus, the department must withhold the motor vehicle record information that does not belong to the requestor's client under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "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."³ Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. However, we note the requestor has a right of access to her client's access device numbers under section 552.023 of the Government Code and it may not be withheld from her under section 552.136. *See Gov't Code* § 552.023(a). Accordingly, the department must withhold the visible insurance policy numbers that do not belong to the requestor's client under section 552.136 of the Government Code.

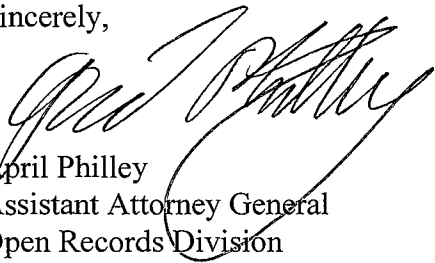
In summary, to the extent the body worn camera recording at issue involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in an arrest, the department must withhold the recording at issue under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. If the submitted body worn camera recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in an arrest, then, (1) to the extent the insurance companies are the choice of individuals and not corporate or other business entities, the department must withhold the names of insurance companies that do not belong to the requestor's client under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the department must withhold the motor vehicle record information that does not belong to the requestor's client under section 552.130 of the Government Code; (3) the department must withhold the insurance policy numbers that do not belong to the requestor's client under section 552.136 of the Government Code; and (4) 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.

³The 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).*

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,

A handwritten signature in black ink, appearing to read "April Philley", written over a circular stamp or seal.

April Philley
Assistant Attorney General
Open Records Division

AP/sb

Ref: ID# 665216

Enc. Submitted documents

c: Requestor
(w/o enclosures)