



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 20, 2017

Mr. Whitt L. Wyatt  
Assistant City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2017-16303

Dear Mr. Wyatt:

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# 669654 (ORR# 17-386).

The Richardson Police Department (the "department"), which you represent, received a request for information pertaining to a specified accident. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

In Open Records Letter No. 2017-00069 (2017), we issued a previous determination authorizing the department to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of again requesting an attorney general decision with regard to the applicability of this exception. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). Thus, pursuant to Open Records Letter No. 2017-00069, with the exception of the date of birth of the requestor's client, the department must withhold all dates of birth

in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

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. This section encompasses information made confidential by other statutes. The submitted information contains recordings from department officers’ body worn cameras. Body worn cameras are subject to chapter 1701 of the Occupations Code. Section 1701.661(a) of the Occupations Code reads as follow:

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). We note the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recordings at issue. The recordings at issue reflect they were required to be made by law or the policies of the department and relate to a law enforcement purpose. *See id.* § 1701.661(h). Further, the department has failed to demonstrate the recordings could not be used as evidence in a criminal prosecution. *See id.* § 1701.661(d) (information “that is or could be used as evidence in a criminal prosecution is subject to the requirements of [the Act.]”). We also have no indication the body worn camera recordings document 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). We note the body worn camera recordings were not made in a private space for the purposes of section 1701.661(f). *See id.* § 1701.661(f); *see also id.* 1701.651(3) (defining “private space” for purposes of section 1701.661(f)). However, section 1701.661(f) provides,

A law enforcement agency may not release any portion . . . 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 body worn camera recordings at issue involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest. Therefore, we must rule conditionally. There is no indication the department has received written authorizations for release from the subject of the recordings. Therefore, if the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then the department must withhold these recordings under section 552.101 in conjunction with section 1701.661(f). However, if the recordings at issue do 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 recordings on that basis. In that instance, we will consider whether the information at issue is otherwise excepted from release under the Act.

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 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 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. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find some of the submitted information, which we have marked and indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, the department must withhold the information we have marked and 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(a). Section 552.130 protects privacy interests. Accordingly, the requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a) ("person or a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to 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 herself). Thus, with the exception of the information pertaining to the requestor’s client, the department must withhold the motor vehicle record information it has indicated and marked in the submitted documents and recordings under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of this chapter, 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.”<sup>1</sup> Gov’t Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, the department must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code.

To conclude, if the submitted body worn camera recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then the department must withhold these recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. The department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information pertaining to the requestor’s client, the department must withhold the motor vehicle record information it has indicated and marked in the submitted documents and recordings under section 552.130 of the Government Code. The department must withhold the insurance policy numbers in the submitted information under section 552.136 of the Government Code. The department must release the remaining information.<sup>2</sup>

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](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

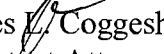
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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

<sup>2</sup>Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

  
James Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/bw

Ref: ID# 669654

Enc. Submitted documents

c: Requestor  
(w/o enclosures)