



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2017

Mr. Peter G. Smith
City Attorney
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR2017-16660

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# 667901.

The Richardson Police Department (the "department") received a request for thirteen categories of information relating to a specified motor vehicle accident. You state you have released some information, including the police officer's crash report pursuant to section 550.065(c) of the Transportation Code. *See* Transp. Code § 550.065(c)(4) (providing for release of accident report if requestor provides two of following three pieces of information: (1) date of accident, (2) name of any person involved in accident, and (3) specific location of accident). You also state the department will redact certain information pursuant to Open Records Letter No. 2017-00069 (2017).¹ You also claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered your arguments 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 Code § 552.101. This section encompasses information made confidential by other statutes.

¹Open Records Letter No. 2017-00069 is a previous determination issued to the department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

We note the submitted information contains a 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 video 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). Further, we have no indication the recording could not 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). The submitted recording demonstrates it was not made in a private space for the purposes of section 1701.661(f). *See id.* §§ 1701.661(f), .651(3) (defining "private space" for purposes of section 1701.661(f)). We note, however, section 1701.661(f) provides, in relevant part:

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). You state the recording in Exhibit C consists of a body worn camera recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and which did not result in an arrest. You do not indicate you have permission for release from the subject of the recording at issue. *See id.* Accordingly, we find the department must withhold the recording in Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code.

Section 552.101 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 conclude some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly,

the department must withhold the information we marked 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. Accordingly, the department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, the department must withhold the recording in Exhibit C 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 under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle information you marked under section 552.130 of the Government Code.²

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,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

²We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 667901

Enc. Submitted documents

c: Requestor
(w/o enclosures)