



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 2, 2017

Ms. Kristie L. Lewis  
Staff Attorney  
Houston Police Department  
1200 Travis Street, 21st Floor  
Houston, Texas 77002-6000

OR2017-17349

Dear Ms. Lewis:

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# 669110 (ORU No. 17-3943).

The Houston Police Department (the "department") received a request for body camera video recordings pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 Code § 552.101. This section encompasses information made confidential by other statutes. We note the submitted information consists of a recording from a department 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). Upon review, we find the requestor in this instance provided the requisite information. 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). Further, we understand the recording is or could be used as evidence in a criminal prosecution. *See id.* § 1701.661(d). Additionally, we have no indication the recording documents incidents that involve the use of deadly force by an officer or relates to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). However, 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). However, 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, we will address the private space aspect of section 1701.661(f). 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)). The department does not indicate it has permission for release from the subjects of the recording made in the private space at issue. *See id.* § 1701.661(f). Accordingly, we find the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations 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 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Upon review, we find the department has failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.


We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the department must withhold the discernable motor vehicle record information under section 552.130 of the Government Code.

In summary, if the submitted body worn camera video recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the recording at issue is confidential and must be withheld in its entirety 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 video recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the department must: (1) withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code; (2) withhold the discernable motor vehicle record information under section 552.130 of the Government Code; and (3) 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](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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/sb

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 669110

Enc. Submitted documents

c: Requestor  
(w/o enclosures)