



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 11, 2017

Ms. LeAnn M. Quinn  
City Secretary  
City of Cedar Park  
450 Cypress Creek  
Cedar Park, Texas 78613

OR2017-18253

Dear Ms. Quinn:

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# 670493 (City Ref. No. 17-931).

The City of Cedar Park (the "city") received a request for all information relating to a specified automotive accident. You state you will release some information to the requestor. 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 recordings from a city 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 provides:

(a) 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 city's police department and relate to a law enforcement purpose. *See* Occ. Code § 1701.661(h). Further, you have failed to demonstrate the recordings at issue could not be used as evidence in a criminal prosecution. *See id.* § 1701.661(d) (stating information "that is or could be used as evidence in a criminal prosecution is subject to the requirements of [the Act.]"). Additionally, we have no indication the body worn camera recordings document an incident that involves the use of deadly force by an officer or relate to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). The body worn camera recordings demonstrate they were 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). 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. 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, we note there is no indication you have received written authorizations for release from all of the subjects of the recordings. Accordingly, in this instance, the submitted body worn camera recordings are confidential and must be withheld under section 552.101 in conjunction with section 1701.661(f). However, if the submitted body worn camera recordings do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, no portion of the recordings are confidential under section 1701.661(f) and they may not be withheld under section 552.101 on that basis. In that instance, we will consider whether the information at issue may be withheld 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 also 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 the information we have indicated meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information 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.<sup>1</sup> *See* Gov't Code § 552.130(a). Upon review, we find the city must withhold the audible and discernable motor vehicle record information in the submitted video recordings under section 552.130 of the Government Code.

In summary, to the extent the submitted body worn camera video recordings involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the city must withhold the recordings under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. To the extent the submitted body worn camera video recordings do not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, the city must: (1) withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the audible and discernable motor vehicle record information in the submitted video recordings 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/>

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<sup>1</sup>The 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).

[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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 670493

Enc. Submitted documents

c: Requestor  
(w/o enclosures)