



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2017

Mr. Matthew Murray
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2017-18674

Dear Mr. Murray:

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# 673486 (PIR No. W062618).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. You state the city has released 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 a recording from a city police department (the "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 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). In this instance, the requestor provided the information required by section 1701.661(a) of the Occupations Code for release of the body worn camera recording at issue. We understand the recording at issue 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). 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 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 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 city has received written authorizations for release from all of the subjects of the recording. Accordingly, in this instance, the body worn camera recording is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. 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)). You do not indicate the city 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 city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code. Nevertheless, to the extent the recording at issue does not involve an

investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, no portion of the remaining video recording is confidential under section 1701.661(f), and it may not be withheld under section 552.101 on that basis. In that instance, we will address your argument against disclosure of the remaining information.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.¹ 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. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's own motor vehicle record information under section 552.023 of the Government Code, and it may not be withheld from him under section 552.130. *See id.* § 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 herself). Accordingly, the city must withhold any audible or visible motor vehicle record information that does not belong to the requestor's client in the remaining video recording under section 552.130 of the Government Code.

In summary, if the submitted body worn camera recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, and the city has not received written authorizations for release from all of the subjects of the recording, the submitted recording is confidential and must be withheld under section 552.101 in conjunction with section 1701.661(f). If the submitted body worn camera

¹The 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).

recording does not involve an investigation of conduct that constitutes a misdemeanor punishable by fine only and did not result in arrest, then, (1) the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with section 1701.661(f) of the Occupations Code; (2) the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the city must withhold any audible or visible motor vehicle record information that does not belong to the requestor's client in the remaining video recording under section 552.130 of the Government Code; and (4) the city must release the remaining information.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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 673486

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information under section 552.023 of the Government Code. *See* Gov't Code § 552.023. Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.