



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2017

Ms. Ashley L. White
Counsel for the Town of Little Elm
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2017-25815

Dear Ms. White:

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# 683731.

The Little Elm Police Department (the "department"), which you represent, received a request for information pertaining to a specified case number. You assert some of the submitted information was not properly requested under section 1701.661(a) of the Occupations Code. Further, you claim 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.

Initially, we note the submitted information includes a department police officer's body worn camera recording. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

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 does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information and the department does not need to release it.¹ However, pursuant to section 1701.661(b), a “failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

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. Section 552.101 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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 department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold this information under section 552.101 on that basis.

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. Upon review, we find the remaining information contains motor vehicle record information subject to section 552.130. We note, however, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code, and the department may not withhold it from her under section 552.130. *See id.* § 552.023(a) (person or person’s authorized representative

¹As we are able to make this determination, we need not consider your arguments against disclosure of this information.

has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Nevertheless, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we find you have failed to demonstrate the remaining information is confidential under section 552.130, and the department may not withhold it on that basis.

We note the remaining information includes e-mail addresses of members of the public that are subject to section 552.137 of the Government Code.² Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The submitted e-mail addresses are not one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the department must withhold the submitted e-mail addresses under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release or subsection (c) applies.

In summary, as the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information and the department does not need to release it. The department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must withhold the submitted e-mail addresses under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release or subsection (c) applies. The department must 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, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²The 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, 480 (1987), 470 (1987).

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

Sincerely,

A handwritten signature in black ink, appearing to read "Cole Hutchison". The signature is written in a cursive style with a large, stylized "C" and "H".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 683731

Enc. Submitted documents

c: Requestor
(w/o enclosures)