



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 16, 2017

Ms. Andrea D. Russell  
Ms. Stacie S. White  
Counsel for the City of Southlake  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2017-26274

Dear Ms. Russell and 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# 684442.

The City of Southlake (the "city"), which you represent, received a request for all information relating to internal affairs investigations involving the requestor's client, including a specified internal affairs investigation number, as well as the personnel file pertaining to the requestor's client. You state the city will release some information to the requestor. You inform us the city will redact some information pursuant to section 552.147(b) of the Government Code, as well as Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

---

<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision.

Initially, we note the submitted information includes city police officers' body worn camera recordings. 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 recordings pursuant to chapter 1701, our ruling does not reach this information and the city need not release it. 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 exempts 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 protected by other statutes, such as laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See id.* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or

another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. We note the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). Accordingly, the city must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.<sup>2</sup> However, upon review, we find you have not demonstrated the remaining information constitutes confidential CHRI for the purposes of chapter 411. Consequently, the city not withhold the remaining information under section 552.101 on this basis.

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 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 city must withhold the public citizens' dates of birth you have marked and we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon review, we find some of the remaining information is subject to section 552.117(a)(2). However, we are unable to determine if the information at issue pertains to the requestor's client. We note section 552.117 protects personal privacy. *See id.* § 552.023(a) (person or person's authorized representative 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 asks governmental body to provide him with information concerning himself). Therefore, to the extent the information at issue pertains to the requestor's client, the requestor has a right of access to his client's information under section 552.023 of the Government Code and the city may not withhold it from him under section 552.117(a)(2). Conversely, if the information at issue

---

<sup>2</sup>We note the requestor can obtain his client's CHRI from DPS. Gov't Code § 411.083(b)(3).

does not pertain to the requestor's client, and if the individual whose information is at issue is currently a licensed peace officer, the city must withhold the information we have indicated under section 552.117(a)(2) of the Government Code.

If the individual at issue is no longer a licensed peace officer, then the information at issue may be protected by section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Upon review, we find some of the remaining information is subject to section 552.117(a)(1). We are unable to determine if the information at issue pertains to the requestor's client. As noted above, section 552.117 protects personal privacy. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, to the extent the information at issue pertains to the requestor's client, the requestor has a right of access to this information pertaining under section 552.023 of the Government Code and the city may not withhold it from him under section 552.117(a)(1). However, if the information at issue does not pertain to the requestor's client, and if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the city must withhold the information we have indicated under section 552.117(a)(1) of the Government Code.

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. You state the city only has the technological capability to splice the submitted video recordings. Thus, you seek to withhold the entirety of the submitted video recordings. However, because the city has the ability to redact portions of the video recordings, we believe the city has the capability to produce a copy of only the non-confidential portions of the submitted video recordings. Accordingly, the city must withhold the motor vehicle record information you have marked and we have indicated under section 552.130 of the Government Code.

In summary, as the requestor did not properly request the body worn camera recordings pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and the city need not release it. The city must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the

Government Code. The city must withhold the public citizens' dates of birth you have marked and we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. If the information at issue does not pertain to the requestor's client, and if the individual whose information is at issue is currently a licensed peace officer, the city must withhold the information we have indicated under section 552.117(a)(2) of the Government Code. If the individual at issue is no longer a licensed peace officer, and if the information at issue does not pertain to the requestor's client, and if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the city must withhold the information we have indicated under section 552.117(a)(1) of the Government Code. The city must withhold the motor vehicle record information you have marked and we have indicated under section 552.130 of the Government Code. The city must release the remaining information.<sup>3</sup>

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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 684442

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup>We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4.