



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2018

Ms. Stephanie H. Harris
City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2018-00145

Dear Ms. Harris:

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# 690137.

The Paris Police Department (the "department") received a request for all information related to a specified investigation. You claim the submitted body worn camera recordings were not properly requested pursuant to section 1701.661 of the Occupations Code. You further claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the requested information includes department officers' body worn camera video 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 video recordings at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released.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 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See Gov’t Code 552.108(a)(2)*. A governmental body that claims an exception to disclosure under section 552.108 must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.302(e)(1)(A). You inform us the submitted information is related to a criminal investigation by the department that “to date, has not resulted in a conviction or deferred adjudication.” We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case “that *did not* result in conviction or deferred adjudication.” *Id.* § 552.108(a)(2) (emphasis added). Thus, having considered your representations, we find you have not demonstrated the information at issue falls within the scope of section 552.108(a)(2) of the Government Code. *See id.* § 552.301(e)(1)(A). We therefore conclude the department may not withhold the remaining information under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section 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.). However, we note the remaining information includes the date of birth of the requestor’s child, who is an adult, and the requestor may be acting as her adult child’s authorized representative. In that instance, the requestor would also have a special right of access to information related to her adult child that would otherwise be protected under common-law privacy. *See Gov’t Code § 552.023(a)*

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

(“a person or 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 a 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). Therefore, to the extent the requestor is acting as her adult child’s authorized representative, the department may not withhold the date of birth related to this individual from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the requestor is not acting as her adult child’s authorized representative, the department must withhold the date of birth related to this individual under section 552.101 of the Government Code in conjunction with common-law privacy. In either instance, the department must withhold the remaining date of birth you have marked 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 or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a). You state, and we agree, the remaining video recordings contain motor vehicle record information subject to section 552.130. You also state the department lacks the technological capability to redact the motor vehicle record information from these recordings. Based on this representation, we conclude the department must withhold the remaining video recordings in their entirety under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). Further, we note some of the remaining information is subject to section 552.130 and some of the submitted photographs contain visible license plates and registration stickers. Accordingly, the department must also withhold the motor vehicle record information you have marked, the motor vehicle record information we have marked, and any visible license plates or registration stickers in the submitted photographs, under section 552.130 of the Government Code.

We note the remaining information contains an e-mail address that is subject to section 552.137 of the Government Code.² Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks

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 (1987), 480 (1987), 470 (1987).

to contract with a governmental body, an e-mail address maintained by a governmental body for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). However, to the extent the requestor is serving as her adult child's authorized representative, the requestor has a right of access to her adult child's personal e-mail address under section 552.137(b). *See id.* § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). Accordingly, to the extent the requestor is not acting as her adult child's authorized representative, the personal e-mail address we have indicated is subject to section 552.137 and must be withheld under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release.

In summary, pursuant to section 1701.661 of the Occupations Code, as the requestor did not properly request the body worn camera video recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information, and the department need not release the requested body camera video recordings at issue in response to this request for information. To the extent the requestor is not acting as her adult child's authorized representative, the department must withhold the date of birth of the requestor's adult child under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the remaining date of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the remaining video recordings in their entirety under section 552.130 of the Government Code. The department must also withhold the motor vehicle record information you have marked, the motor vehicle record information we have marked, and any visible license plates or registration stickers in the submitted photographs, under section 552.130 of the Government Code. To the extent the requestor is not acting as her adult child's authorized representative, the department must withhold the personal e-mail address we have indicated under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release. The department must release the remaining information.³

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

³We note the requestor may have a right of access to the information being released. *See* Gov't Code §§ 552.023(a), .137(b); *see also* ORD 481 at 4.

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 "Tim Neal". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Neal".

Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 690137

Enc. Submitted documents

c: Requestor
(w/o enclosures)