



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 9, 2018

Ms. Ashley L. White
Counsel for City of Lancaster
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2018-03058

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# 694414 (City ID No. W006343-111617).

The Lancaster Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident. You indicate you have no information responsive to a portion of the request.¹ You claim the submitted body worn camera recording was not properly requested pursuant to section 1701.661 of the Occupations Code. Additionally, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the submitted arguments 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, and the department acknowledges, the submitted information contains a recording from a department officer's body worn camera. Body worn cameras are subject to

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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). Upon review, we determine 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* Occ. Code § 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 relate to an administrative or criminal investigation of an officer. *See id.* § 1701.660(a). Further, the submitted recording demonstrates it was 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 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 department 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 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 body worn camera recording is confidential under section 1701.661(f) and it may not be withheld under section 552.101 on that basis. In this instance, we will address the applicability of the department's claimed exceptions against disclosure of the body worn camera recording.

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.). Upon review, we find the public citizen's date of birth within the video recording at issue is subject to section 552.101 of the Government Code in conjunction with common-law privacy. You state the department lacks the technological capability to redact the date of birth from the video recording. Based on this representation, we conclude the department must withhold the recording we indicated in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.² *See* Open Records Decision No. 364 (1983). However, we find the department has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold the remaining information under section 552.101 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. *See* Gov't Code § 552.130. Upon review, we find some of the remaining video recordings, which we indicated, contain confidential motor vehicle record information. As noted above, you state the department does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the entireties of the video recordings we indicated section 552.130 of the Government Code. *See* ORD 364. However, we find the remaining information does not contain motor vehicle record information subject to section 552.130 of the Government Code. Therefore, the department may not withhold any portion of the remaining information under section 552.130.

In summary, 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, the body worn camera recording must be withheld under section 552.101 of the Government Code in

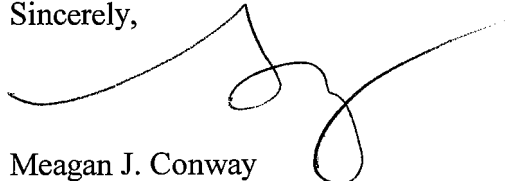
²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

conjunction with section 1701.661(f) of the Occupations Code. If the 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 conclude the department must withhold the body worn camera recording in its entirety under section 552.130 of the Government Code. In either event, the department must (1) withhold the recording we indicated in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the entirety of the video recording we indicated 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/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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/sb

Ref: ID# 694414

Enc. Submitted documents

c: Requestor
(w/o enclosures)