



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 26, 2018

Ms. Charla Thomas  
Deputy City Attorney  
City of Temple  
2 North Main Street, Suite 308  
Temple, Texas 76501

OR2018-04349

Dear Ms. Thomas:

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# 697404.

The Temple Police Department (the "department") received a request for fourteen categories of information pertaining to a specified incident. You claim some of the submitted information is not subject to the act pursuant to section 1701.661 of the Occupations Code. You claim the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

The submitted information includes an 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 it need not be released. 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). We note the remaining video recordings consist of dashboard camera recordings from department vehicles. We find this information does not consist of body worn camera recordings. Therefore, the remaining video recordings are not subject to section 1701.661 of the Occupations Code, and the department may not withhold any portion of the remaining video recordings under section 552.101 of the Government Code on that basis.

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. Section 552.101 encompasses section 773.091 of the Health and Safety Code, which provides, in relevant part:

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091. Upon review, we find the information we marked constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, except for the information subject to section 773.091(g), the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. However, we find you have failed to demonstrate

the remaining information is subject to section 773.091(b). Thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by statute, such as section 181.006 of the Health and Safety Code, which provides the following:

[F]or a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2)(A) defines "covered entity" to include any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

*Id.* § 181.001(b)(2)(A). You do not inform us the department is a covered entity for purposes of section 181.006 of the Health and Safety Code. Therefore, we find you have failed to demonstrate any of the remaining information is subject to section 181.006 of the Health and Safety Code. Thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

We note some of the remaining video recordings contain information protected by common-law privacy. Section 552.101 of the Government Code 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.). We note

the requestor has a right of access to her client's date of birth. *See* Gov't Code § 552.023(a) ("person or a 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 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). Thus, with the exception of the requestor's client's date of birth, the department must withhold all public citizens' dates of birth in the video recordings at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note some of the remaining video recordings contain information subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 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 Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We note the requestor has a right of access her client's motor vehicle record information. *See id.* § 552.023(a). Accordingly, the department must withhold any audible or visible driver's license numbers, license plate numbers, and license plates in the video recordings at issue that do not belong to the requestor's client under section 552.130 of the Government Code.

In summary, as the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. Except for the information subject to section 773.091(g), the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. With the exception of the requestor's client's date of birth, the department must withhold all public citizens' dates of birth in the video recordings at issue under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold any audible or visible driver's license numbers, license plate numbers, and license plates in the video recordings at issue that do not belong to the requestor's client under section 552.130 of the Government Code. The department must release the remaining information.<sup>2</sup>

---

<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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

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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/sb

Ref: ID# 697404

Enc. Submitted documents

c: Requestor  
(w/o enclosures)